

IN THE
Supreme Court of the United States

October Term, 1972

No. 71-1637

CITY OF BURBANK, et al.,

Appellants,

vs.

LOCKHEED AIR TERMINAL, INC., et al.,

Appellees.

**Appeal From the United States Court of Appeals
for the Ninth Circuit.**

**APPENDIX.
VOLUME I.
(Pages 1-428.)**

Jurisdictional Statement Filed June 17, 1972.

Probable Jurisdiction Noted October 10, 1972.

APPENDIX.

VOLUME I.

	Page
Relevant Docket Entries	1
Complaint of Lockheed Air Terminal, Inc. and Pacific Southwest Airlines, filed May 14, 1970	6
Answer to Complaint, filed June 4, 1970	19
Complaint of Intervening Plaintiff Air Transport Association of America, filed July 8, 1970	27
Answer to Complaint of Intervening Plaintiff, filed July 22, 1970	39
Pretrial Conference Order, filed July 27, 1970 ..	40
Reporter's Transcript of Proceedings, pages 4 through 96, 100 through 218, 222 through 305, and 309 through 411, line 18	57
Opinion of the District Court, filed September 24, 1970	341
Findings of Fact and Conclusions of Law, filed November 30, 1970	375
Judgment of the District Court, filed November 30, 1970	408
Opinion of the Court of Appeals, filed March 22, 1972	410
Amended Judgment of the Court of Appeals, filed March 22, 1972	428

TRIAL OF EXHIBITS.

Plaintiffs' and Intervening Plaintiff's Exhibits:

EXHIBIT 2—Scale Drawing of Hollywood-Burbank Airport	
EXHIBIT 4—Order of Civil Aeronautics Board Approving Acquisition by Lockheed Aircraft Corporation of all outstanding capital stock of United Airports Company of California, Ltd., the then owner and operator of Union Air Terminal (now Hollywood-Burbank Airport)	429
Opinion. Civil Aeronautics Board—Dated November 22, 1940	431
Notice of Hearing Dated November 13, 1940	439
EXHIBIT 5—License Agreement dated April 26, 1951 between Lockheed Air Terminal, Inc. and United States of America (Civil Aeronautics Administration)	440
EXHIBIT 6—Supplements and Amendments to License Agreement dated April 26, 1951 between Lockheed Air Terminal, Inc. and United States of America and list of current U.S. Government Equipment at Hollywood-Burbank Airport	445
EXHIBIT 7—FAA approach and departure charts for Hollywood-Burbank Airport	
EXHIBIT 30—FAA Order BUR 7100.5B, dated 4 Sept. 1969	453
EXHIBIT 32—FAA Facility Management Handbook 7210.3, Chapters 12, 19—Flow Control ..	463
EXHIBIT 33—FAA Order 7230.12—Central Flow Control Facility	472
EXHIBIT 36—Letter dated September 14, 1967 to Civil Aeronautics Board from Charles E. Compton, Mayor, City of Burbank	476

	Page
EXHIBIT 39—Resolution No. 14,506 of Burbank City Council passed and adopted April 18, 1967	478
EXHIBIT 40—Resolution No. 15,190 of Burbank City Council passed and adopted May 13, 1969	481
EXHIBIT 41—Letter dated August 2, 1966 to Chairman, Civil Aeronautics Board from Robert F. Brandon, Mayor, City of Burbank	483
EXHIBIT 47—FAA Notice of Proposed Rule Making—High Density Traffic Airports, 33 Fed. Reg. 12580 (Sept. 5, 1968)	485
EXHIBIT 48—FAA High Density Traffic Airports Rules, 33 Fed. Reg. 17896 (Dec. 3, 1968)	497
EXHIBIT 51—Continental Air Lines Daily Planning Diagrams for Boeing and DC-9 Equipment and List of Minimum Cancellations required by a 2300-0700 nationwide takeoff curfew	501
EXHIBIT 55—Letter dated May 10, 1966 to President of the Borough of Queens from James T. Pyle, Director, Aviation Development Council	502
EXHIBIT 56—National Airport Plan, FY 1969-1973, pages 13-14	513
Defendants' Exhibits:	
EXHIBIT A—Emergency Conditions Justifying a Jet Departure During Curfew Hours	518
EXHIBIT A-1—Letter dated May 1, 1970 to David M. Simmons, President of Lockheed Air Terminal, from Samuel Gorlick, City Attorney, City of Burbank	520
EXHIBIT B—Total Operations Per Hour—1968.	

APPENDIX.

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Probable Jurisdiction Noted October 10, 1972.

Relevant Docket Entries.

**United States District Court
Central District of California**

May 14, 1970

**Filed Complaint for Declaratory Relief and In-
junctive Relief.**

June 4, 1970

Filed Defendants' Answer to Complaint.

July 8, 1970

Filed People of the State of California Request To File Brief Amicus Curiae and Order (EC).

July 8, 1970

Filed Motion To Intervene as a Plaintiff by Air Transport Association of America. Filed Statement of No Opposition to Motion To Intervene of Air Transport Association on Behalf of City of Burbank, et al.; filed Pacific Southwest Air Lines Statement of No Opposition to Motion To Intervene of Air Transport Association; filed Lockheed Air Terminal, Inc. Statement of No Opposition to Motion To Intervene of Air Transport Association; filed Order (EC) granting leave to Air Transport Association of America to intervene as a plaintiff. Filed Complaint of Intervening Plaintiff Air Transport Association of America.

July 17, 1970

Filed Defendants' Memorandum of Contentions of Fact and Law. Filed Joint Statement of Contentions of Fact and Law Submitted by Plaintiffs and Intervening Plaintiff. Filed Plaintiffs' and Intervening Plaintiff's Prospective Witnesses. Filed List of Plaintiffs' and Intervening Plaintiff's Trial Exhibits.

July 22, 1970

Filed Answer to Complaint of Intervening Plaintiff Air Transport Association of America.

July 27, 1970

Entered proceedings of pretrial. Pretrial had. Filed Pretrial Conference Order.

Aug. 20, 1970

Filed motion for leave to file Amicus Curiae Brief on behalf of Federal Aviation Administration and order (EC) thereon. Filed Amicus Curiae Brief of the Federal Aviation Administration.

Sept. 14, 1970

Filed Revised List of Plaintiffs' and Intervening Plaintiff's Prospective Witnesses. Filed Revised List of Plaintiffs' and Intervening Plaintiff's Trial Exhibits.

Sept. 15, 1970

Entered proceedings court trial (1st day). Witnesses sworn and exhibits marked. Entered order continuing to 9/16/70, 9:30 A.M. further court trial.

Sept. 16, 1970

Entered proceedings further court trial (2nd day). Witnesses sworn and exhibits marked. Entered order continuing to 9/17/70, 9:30 A.M. further court trial.

Sept. 17, 1970

Entered proceedings further court trial (3rd day). Exhibits marked. Oral argument had. Entered Order matter to "stand submitted."

Sept. 24, 1970

Filed Court's Memorandum for Use in Preparation of Proposed Findings, Conclusions and Judgment.

Oct. 23, 1970

Lodged: Proposed Findings of Fact and Conclusions of Law. Lodged: Proposed Judgment.

Oct. 30, 1970

Filed Objections to Proposed Findings of Fact and Conclusions of Law and Request for Additional Findings.

Nov. 30, 1970

Filed Findings of Fact and Conclusions of Law. Filed Judgment and order thereon that the Burbank curfew ordinance is unconstitutional, illegal and void, that defendants are permanently enjoined and restrained from taking any action in pursuance of said ordinance and that plaintiffs and intervening plaintiff recover costs from defendants.

Dec. 22, 1970

Filed Defendants' Notice of Appeal. Filed Defendants' Bond for Costs on Appeal in the amount of \$250.

**United States Court of Appeals
for the Ninth Circuit**

Apr. 8, 1971

Filed Appellants' Brief.

June 18, 1971

Filed Attorney General's request for leave to file amicus curiae brief for the People of the State of California in support of appellant; with consent of appellants and appellees to file late amicus brief.

July 13, 1971

Filed Brief of the Federal Aviation Administration as Amicus Curiae.

July 14, 1971

Filed Appellees' Brief.

July 28, 1971

Filed Appellants' Reply Brief.

Nov. 3, 1971

Argued and submitted to (Br, D, T).

Mar. 22, 1972

Ordered opinion (Trask) filed and judgment to be filed and entered.

Mar. 22, 1972

Filed opinion—Affirmed.

Mar. 22, 1972

Filed and entered Judgment.

Apr. 13, 1972

Issued Judgment to Clerk, District Court.

May 15, 1972

Issued Amended Judgment to Clerk, District Court.

May 15, 1972

Received Appellants' Notice of Appeal to the Supreme Court.

Complaint for Declaratory Relief and Injunctive Relief.

1. **Burbank Municipal Code §20-32.1 Is Void, Illegal and Unconstitutional in Violation of the "Due Process" Clause of the U. S. Constitution.**
2. **Burbank Municipal Code §20-32.1 Is Void, Illegal and Unconstitutional in Violation of the "Commerce" Clause of the U. S. Constitution.**
3. **Burbank Municipal Code §20-32.1 Is Void, Illegal and Unconstitutional in Violation of the "Supremacy" Clause of the U. S. Constitution.**

United States District Court, Central District of California.

Lockheed Air Terminal Inc., a corporation and Pacific Southeast Air Lines, a corporation, Plaintiffs, vs. The City of Burbank, a municipal corporation; Dr. Jarvey Gilbert, Mayor; Robert R. McKenzie, Vice Mayor; Councilman George W. Haven; Councilman Robert A. Swanson; Councilman D. Verner Gibson; Joseph N. Baker, City Manager, Samuel Gorlick, City Attorney for the City of Burbank and Rex R. Andrews, Chief of Police of the City of Burbank, Defendants. No. 70-1075-EC.

Filed May 14, 1970

PLAINTIFF ALLEGES:

INTRODUCTION:

1. This is an action of a civil nature brought by **LOCKHEED AIR TERMINAL, INC.**, a Delaware corporation, and **PACIFIC SOUTHWEST AIR LINES**, a California corporation, for a declaratory judgment that Burbank Municipal Code §20-32.1, prohibiting pure jet aircraft from taking off from the Hollywood-Burbank Airport between the hours of 11:00 P.M. and 7:00 A.M. of the following day is invalid and uncon-

stitutional and for an order enjoining the enforcement of said ordinance.

JURISDICTION:

2. This action arises under the Constitution, Laws and Treaties of the United States as to which this Court has jurisdiction pursuant to Title 28 U.S.C., Section 1331 and under an Act of Congress regulating commerce as to which this Court has jurisdiction pursuant to Title 28 U.S.C., Section 1337, and this action presents for determination a case of actual controversy within the jurisdiction of this Court pursuant to Title 28 U.S.C., Section 2201 *et seq.* as more particularly appears hereinafter. The amount in controversy exceeds, exclusive of interest and costs, the sum and value of Ten Thousand (\$10,000) Dollars.

PARTY PLAINTIFFS:

3. (a) Plaintiff, LOCKHEED AIR TERMINAL INC., (hereinafter referred to as "Lockheed"), is a corporation organized and existing under and pursuant to the laws of the State of Delaware and is doing business in the County of Los Angeles, State of California. Lockheed, at all times material herein, was and is the owner and operator of the "Hollywood-Burbank Airport" (hereinafter referred to as "Airport").

(b) Plaintiff, PACIFIC SOUTHWEST AIR LINES (hereinafter referred to as "PSA"), is a corporation organized and existing under and pursuant to the laws of the State of California and is doing business in the County of Los Angeles, State of California.

PARTIES DEFENDANT:

4. (a) The City of Burbank is a municipal corporation in the County of Los Angeles, State

of California, having power to sue and be sued in its own name;

(b) DR. JARVEY GILBERT is the duly elected Mayor of the City of Burbank;

(c) ROBERT R. McKENZIE is the duly elected Vice Mayor of the City of Burbank;

(d) GEORGE W. HAVEN, ROBERT A. SWANSON and D. VERNER GIBSON are duly elected Councilmen for the City of Burbank;

(e) JOSEPH N. BAKER is the City Manager of the City of Burbank;

(f) SAMUEL GORLICK is the City Attorney of the City of Burbank;

(g) REX R. ANDREWS is the Chief of Police of the City of Burbank.

5. The defendants, GILBERT, McKENZIE, HAVEN, SWANSON and GIBSON, constitute the City Council for the City of Burbank and have the authority to enact and enforce ordinances for the regulation of specified matters within the City of Burbank. Defendant GORLICK and the attorneys within his office have the responsibility of prosecuting violations of ordinances and other misdemeanors within the City of Burbank. The defendant, REX R. ANDREWS, as Chief of Police, is responsible for and oversees the enforcement of municipal ordinances including the ordinance here in question.

STATEMENT OF CLAIM:

6. The Airport occupies approximately 550 acres in the northwestern portion of the City of Burbank. Although the major portion of the Airport is within the city limits of the City of Burbank, the Airport property is bounded by the City of Los Angeles to the north and

west. The Airport property is outlined in red on Exhibit A which is attached hereto and incorporated herein by reference as if set forth at length. The boundary between the City of Burbank and the City of Los Angeles is depicted in blue, on said Exhibit A, with the City of Burbank occupying that area depicted on Exhibit A, which lies to the south and east of the boundary.

7. The Airport is the largest privately owned airport in the United States, from the standpoint of commercial air carrier operations. As such, it is a vital link in interstate and intrastate air commerce. It figures prominently in the airport satellite complex plan of the Los Angeles metropolitan area and this importance is expected to increase.

8. The Airport was dedicated May 30, 1930, and has been in continuous use since by both private and commercial aircraft. On November 9, 1940, United Airlines Transport Corp. sold its wholly owned subsidiary, United Airports Company of California Limited, which Company was the owner and operator of the Airport, to Lockheed Aircraft Corporation, which subsequently changed the name of United Airports Company of California Limited to that of the plaintiff, Lockheed Air Terminal, Inc. After a public hearing, the Civil Aeronautics Board, on November 22, 1940, approved these transactions.

9. On March 31, 1970, the City Council of the City of Burbank enacted Ordinance No. 2216, which ordinance added Section 20-32.1 to the Burbank Municipal Code, the stated purpose of which is "to prohibit pure jet take-offs at the Hollywood-Burbank Airport between 11:00 P.M. and 7:00 A.M."

10. The newly enacted §20-32.1 of the Burbank Municipal Code, (hereinafter referred to as the "ordinance") provides as follows:

Aircraft Take-Offs:

(a) Pure Jets Prohibited from Taking Off Between 11:00 P.M. and 7:00 A.M.

It shall be unlawful for any person at the controls of a pure jet aircraft to take off from the Hollywood-Burbank Airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

(b) Airport Operator Prohibited from Allowing Take-Offs.

It shall be unlawful for the operator of the Hollywood-Burbank Airport to allow a pure jet aircraft to take off from said airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

(c) Exception: Emergencies.

This section shall not apply to flights of an emergency nature if the City's Police Department is contacted and the approval of the Watch Commander on duty is obtained before take-off."

11. The ordinance, by its terms, became effective May 4, 1970. The penalty provided for the violation of said ordinance is a fine of not more than \$500.00 or six months in the county jail or both for each offense as set forth in Burbank Municipal Code §1-5.

12. The ordinance, by its terms, constitutes an absolute unconditioned and unqualified bar to routine jet take-off operations between the hours of 11:00 P.M. and 7:00 A.M. of the following day.

13. On information and belief, the defendant officials of the City of Burbank have publicly and re-

peatedly announced that they intend vigorously and aggressively to enforce the ordinance.

14. The ordinance does not limit itself to flights which overfly property within the City of Burbank, but purports to extend itself to take-offs from any runway, even those from which departing planes overfly the City of Los Angeles and not the City of Burbank.

15. The Airport has two principal runways for the operation of aircraft. These runways are designated by their compass heading in tens of degrees. Runway 25 has a compass heading of 250°. It handles aircraft which take off to the west. Departing aircraft using this runway do not fly over the City of Burbank. Runway 33 has a heading of 330° and aircraft departing by this runway do not fly over the City of Burbank. The location of these runways is such that their departure path is exclusively within the City of Los Angeles. Aircraft departing by runways 7 and 15 taking off to the east and south respectively do overfly the City of Burbank.

16. The Airport provides services to regularly scheduled commercial aircraft as well as privately owned, corporate and general aviation aircraft. In 1969, there were 32,984 air carrier movements from the Airport. This included 584,970 revenue passengers coming in and 593,311 revenue passengers departing from the Airport. Pure commercial jet aircraft operating from the Airport consist of Boeing 727's and 737's and Douglas DC9's. In 1969, there were 22,088 individual flight operations by these three types of aircraft. Of these jet operations at the Airport, the majority are by PSA, a regularly scheduled intrastate carrier. Regularly scheduled interstate jet flights are conducted by

Air West, Inc. to and from the Airport. The balance of the jet operations are by corporate and private aircraft as well as major scheduled airlines employing the Airport as an alternate to Los Angeles International Airport.

17. The Airport is designated by the FAA as an alternate to Los Angeles International Airport. Thus, when weather or other conditions at Los Angeles International are such that aircraft cannot be handled at that facility, they may be diverted to the Airport as an alternate. During the years 1967, 1968 and 1969, Los Angeles International Airport was closed for 469 hours and 21 minutes. During virtually that entire time, the Airport provided alternate services for regularly scheduled aircraft operating out of Los Angeles International Airport. In 1969, there were 34 alternate flights by Western Air Lines Inc., 103 alternate flights by United Air Lines and a substantial number of alternate flights by PSA and Air West, Inc., of aircraft diverted from Los Angeles International to the Airport. The availability of the Airport as an alternate to Los Angeles International Airport is fundamental to the safe operation of aircraft in and out of the greater Los Angeles Metropolitan Area. Much of this emergency back-up service is provided during the early morning hours when the fog conditions are at their worst at the Los Angeles International Airport. Enforcement of the ordinance would seriously restrict this much needed back-up safety feature of the Airport.

18. Lockheed Aircraft Corporation operates and maintains military defense plant facilities at the Airport and in connection therewith there were 3811 individual flight operations by military aircraft in 1969. A number of these operations were by pure jet aircraft operating in furtherance of the national defense. Because

of the substantial interests of the defense industry located at the Airport, many private pure jet flights operate from the Airport on military business. These flights must be free to operate at irregular hours to meet the many urgent demands of the military.

19. The United States has by §4 of the Federal Aviation Act of 1958 (49 U.S.C. §1304), declared a "public right of freedom, of transit through the navigable air space of the United States," and defined "navigable air space" to mean "air space above the minimum altitudes of flight prescribed by regulations issued under" such Act, and to "include air space needed to insure safety in take-off and landing of aircraft" (49 U.S.C. §1301(24)). Under such Act (49 U.S.C. §1341(a)), the Federal Aviation Administrator is "authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, for the . . . protection . . . of aircraft, for the protection of persons and property on the ground, . . . including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles . . ." (49 U.S.C. §1348(c)) and to "assign by rule, regulation, or order the use of the airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft" (49 U.S.C. §1348(a)).

20. Pursuant to his statutory authority, the Administrator has established regulations, procedures, standards and practices that cover every aspect of the operation of aircraft flying to, approaching, landing at and taking off from the Airport, including the operation of such aircraft over the surface of the land occupied by the City of Burbank. The Administrator has established Federal airways that pass over the Airport

and over the City of Burbank (Federal Aviation Regulations, §71.1 *et seq.*); and has established an airport traffic area and a control zone that includes all of the Airport and a substantial portion of the City of Burbank (Federal Aviation Regulations, §93.31 *et seq.*). This airport traffic area and this control zone extend from the surface of the land upwards (up to 2,000 feet above the surface in the case of the airport traffic area) within a five statute mile horizontal radius from the geographical center of the Airport (Federal Aviation Regulations, §93.31 *et seq.*). Attached hereto and incorporated herein by reference as Exhibit B, is an instrument approach plate for the Airport which depicts certain of these regulations. The ordinance, to the extent that it necessarily prevents operation of aircraft therein, is in direct conflict with the regulations establishing and governing the use of Federal airways, traffic areas and control zones.

21. The transportation by air in interstate and intrastate commerce of passengers, and property, is a highly complicated and technical operation. Considerations of safety and efficiency require that legislation as to each of the many aspects of such an operation should establish a single set of standards and procedures uniformly administered and sufficiently flexible and adaptable to respond to the dynamic nature of the operation and to the swift changes and technological developments to which it is susceptible. The Federal Aviation Act of 1958 (49 U.S.C. §1301 *et seq.*) and related legislation have established a comprehensive and exclusive statutory scheme for the regulation of air traffic and provided for the uniform and coordinated administration of the scheme by the Administrator.

22. The ordinance is invalid and unconstitutional for the following reasons:

(a) The ordinance is so unduly restrictive that the effect of the ordinance is to prohibit reasonable and normal activities ordinarily and necessarily carried on, in and about the City of Burbank to the degree that the ordinance violates and is repugnant to due process clause of Amendment XIV of the Constitution;

(b) It unreasonably bars scheduled aircraft flights to and from the Airport and is therefore repugnant to the due process clause of Amendment XIV of the Constitution;

(c) It is an unlawful interference with, and an unreasonable and undue burden upon, interstate commerce in violation of the Constitution (Art. I, Section 8, Clause 3);

(d) It is an undue interference with and burden upon the war power of the United States in violation of the Constitution (Art. I, Section 8, clauses 11-14);

(e) It is in conflict with the Federal Aviation Act of 1958 (49 U.S.C. §1301 *et seq.*) and other statutes of the United States and regulations issued thereunder, in violation of the Supremacy Clause of the Constitution (Art. VI, Section 2);

(f) Its provisions deal with a field that has been occupied and preempted by the Federal Government to a degree which excludes the enactment by public entities under their police powers, of ordinances such as the ordinance challenged herein.

23. Lockheed, in connection with its development and operation of the Airport, has entered into contracts which are now in effect with agencies of the Federal Government, air lines and miscellaneous tenants, permittees and other users of the Airport involving millions

of dollars. In addition, Lockheed is obligated to pay the City of Burbank substantial sums in the form of property tax payments covering the Airport property.

24. Compliance with the ordinance by the scheduled airlines and other operators using the Airport, would restrict operation of the Airport to such a degree as to substantially impair Lockheed's contractual rights, and goodwill, with the air lines, other lessees, permittees, concessionaires and users of the Airport. The Airport's reputation as one of the major air terminals in interstate and intrastate commerce would be destroyed. Compliance by PSA would restrict its ability to service and fulfill the public need for transportation and thereby impair its goodwill with the public. The extent of these damages could not be estimated or compensated for in money.

25. Surveys made of the public need for air transportation in the rapidly growing Los Angeles metropolitan area, predict greatly increased demands upon the existing air terminal facilities including the Airport. The unreasonable limitations on the use of the Airport by the enforcement of the ordinance inhibits Lockheed's ability to anticipate and meet these demands. There is nothing in the ordinance which prevents more restrictive modification of it in the future by future office holders of the City of Burbank and, therefore, the public is unable to plan on the extent of the services available from plaintiffs in the future. Neither are the plaintiffs able to chart and prepare for the Airport's future growth, all of which constitutes damage which cannot be estimated or compensated for in money.

26. By reason of the foregoing, the plaintiffs are immediately threatened with great and irreparable damage for which they have no adequate legal remedy.

WHEREFORE, the plaintiffs pray that the aforesaid ordinance and each and every part and section thereof be declared to be unconstitutional, illegal and void;

THAT the defendant, City of Burbank, and the individual defendants and each of them in their representative capacities as officials of the City of Burbank charged with the enforcement of the provisions of the aforesaid ordinance, their representatives, agents, servants, employees, attorneys and successors, be enjoined and restrained by a permanent Order of Injunction of this Court from taking any action in pursuance of said ordinance;

THAT pending determination of the prayer for an Order granting a permanent injunction, this Court issue a Preliminary Order of Injunction restraining the defendant, City of Burbank and the individual defendants and each of them individually and in their respective capacities as officials of the City of Burbank, charged with the enforcement of the provisions of the aforesaid ordinance, their representatives, agents, servants, employees, attorneys and successors from taking any action in pursuance of said ordinance.

THAT pending determination of the prayer for an Order granting Preliminary Injunction, this Court issue an Order temporarily restraining the City of Burbank and the individual defendants and each of them individually and in their respective capacities as officials of the City of Burbank, charged with the enforcement of the provisions of the aforesaid ordinance, their representatives, agents, servants, employees, at-

torneys and successors from taking any action in pursuance of said ordinance;

AND for such and other further relief as the Court may deem just and proper.

DATED: May 14th, 1970.

KIRTLAND & PACKARD

By: /s/ Winston F. Tyler

WINSTON F. TYLER

(Jurat omitted in printing).

**Answer to Complaint for Declaratory Relief
and Injunctive Relief.**

(Title omitted in printing).

Filed: June 4, 1970.

Come now Defendants THE CITY OF BURBANK, a municipal corporation; DR. JARVEY GILBERT, Mayor; ROBERT R. McKENZIE, Vice Mayor; Councilman GEORGE W. HAVEN; Councilman ROBERT A. SWANSON; Councilman D. VERNER GIBSON, JOSEPH N. BAKER, City Manager, SAMUEL GORLICK, City Attorney for the City of Burbank and REX R. ANDREWS, Chief of Police of the City of Burbank, and in answer to the Complaint for Declaratory Relief and Injunctive Relief deny, admit and allege as follows:

I

Answering Paragraph 7 of said Complaint, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Paragraph and placing their denial on that ground, deny each and every allegation and statement contained in said Paragraph 7.

II

Answering Paragraph 12 of said Complaint, Defendants deny each and every allegation and statement contained therein and in that connection allege as follows: That after said ordinance was adopted and prior to the time it became effective Plaintiff LOCKHEED AIR TERMINAL, INC. was invited to provide Defendant CITY OF BURBANK with a list of situations which it felt would qualify as emergencies under said ordinance and pursuant to such invitation a list was furnished by said plaintiff, a copy of which is attached

hereto as "Exhibit 1" and by this reference made a part hereof, and, after review by the City Attorney and officials of the Police Department of Defendant CITY of BURBANK, was approved and accepted for use by the Police Department in administering the emergency clause of said ordinance; that, in addition, at the request of Lockheed-California Company, a charter flight which departs Hollywood-Burbank Airport at 6:40 a.m. for Palmdale, Monday through Friday each week, to carry Lockheed-California specialists to Palmdale for critical work on the L-1011 program, was approved as an emergency flight under the provisions of said ordinance; that confirmation of such approval was made by letter dated May 1, 1970, a copy of which is attached hereto as "Exhibit 2" and by this reference made a part hereof; that the officials of the Defendant CITY OF BURBANK, have made every effort to be reasonable in the enforcement of said ordinance, and the only request refused was a request by Plaintiff PACIFIC SOUTHWEST AIR LINES that a regularly scheduled commercial flight on Sunday evenings, which departs at 11:30 p.m., be cleared as an emergency under the provisions of said ordinance.

III

Answering Paragraph 13 of said Complaint, Defendants deny each and every allegation and statement therein contained.

IV

Answering Paragraph 15 of said Complaint, Defendants admit all of the allegations and statements contained therein save and except the allegations that runways 25 and 33 are the principal runways utilized by aircraft departing the Hollywood-Burbank Airport

and in that connection allege that the principal runway utilized for such purposes is runway 15.

V

Answering Paragraph 16 of said Complaint, Defendants admit that said airport provides services to regularly scheduled commercial aircraft as well as privately owned corporate and general aviation aircraft and as to the remainder of the allegations contained in said Paragraph, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations and placing their denial on that ground deny each and every allegation therein contained not herein specifically admitted to be true.

VI

Answering Paragraph 17 of said Complaint, Defendants deny that the availability of the airport as an alternate to Los Angeles International Airport is fundamental to the safe operation of aircraft in and out of the greater Los Angeles Metropolitan Area and further deny that the enforcement of the ordinance would seriously restrict this much needed back-up safety feature of the airport, and as to the remainder of the allegations contained in said Paragraph Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations, and placing their denial on that ground deny each and every such other allegation and statement therein contained.

VII

Answering Paragraph 18 of said Complaint, Defendants deny that these flights must be free to operate at irregular hours to meet the many urgent demands of the military or for other purposes and as to the remainder of the allegations contained in said Paragraph

Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations, and placing their denial on that ground deny each and every such other allegation and statement therein contained.

VIII

Answering Paragraph 20 of said Complaint, Defendants deny that said ordinance in any respect prevents operation of aircraft in the air space above and around said airport, and further deny that said ordinance in any respect directly conflicts with the regulations establishing and governing the use of Federal airways, traffic areas and control zones.

IX

Answering Paragraph 22 of said Complaint, Defendants deny each and every allegation and statement therein contained.

X

Answering Paragraph 23 of said Complaint, Defendants admit that Lockheed is obligated to pay the City of Burbank substantial sums in the form of property tax payments covering the airport property, and as to the remainder of the allegations contained in said Paragraph, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations and placing their denial on that ground deny each and every allegation therein contained not herein specifically admitted to be true.

XI

Answering Paragraph 24 of said Complaint, Defendants deny each and every allegation and statement therein contained.

XII

Answering Paragraph 25 of said Complaint, Defendants admit that there is nothing in the ordinance or otherwise which prevents more restrictive modification of it in the future by future office holders of the City of Burbank; deny that the enforcement of the ordinance places unreasonable limitations on the use of the airport; deny that the ordinance inhibits Lockheed's ability to anticipate and meet future demands; deny that the public is unable to plan on the extent of the services available from Plaintiffs in the future; deny that the Plaintiffs are unable to chart and prepare for the airport's future growth; and deny that such alleged inability constitutes damage which cannot be estimated or compensated for in money.

XIII

Answering Paragraph 26 of said Complaint, Defendants deny each and every allegation and statement therein contained.

WHEREFORE, Defendants pray that Plaintiffs take nothing by their Complaint and that they be hence dismissed with their costs.

DATED this 3rd day of June, 1970.

SAMUEL GORLICK, City Attorney,
and RICHARD L. SIEG, JR.,
Asst. City Atty.

By /s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr.

Attorneys for all defendants except
Samuel Gorlick

/s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr., Attorney
for defendant Samuel Gorlick

EXHIBIT 1

EMERGENCY CONDITIONS JUSTIFYING
A JET DEPARTURE DURING CURFEW
HOURS

1. Delay of a flight which had been scheduled for departure prior to 2300 due to:

Mechanical problems

Weather

Air traffic control procedures

In these instances with the potential of many passengers being affected, we would have the range of emergency trips, disruption of vacation and business arrangements as well as the economic hardship for the passengers and the airlines.

2. Departure delayed due to bomb threat—aircraft delayed for search of aircraft, passengers and baggage.
3. Weather conditions causing aircraft to land here in place of a previously planned airport. When the weather permits, the aircraft should be allowed to resume its flight to avoid further disruption of the airlines' aircraft scheduling.
4. Medical emergency flights such as flying serum or other medical supplies and ambulance flights.
5. Military flights were the pilot states that an emergency exists.
6. Flights transporting personnel to work on government projects. If, due to the curfew, these people would be unable to get to their destination when needed, then the delay would not be in the national interest.



FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

7. An aircraft which had to land here because of emergency conditions such as the illness of a passenger or a mechanical condition of the aircraft, should be allowed to depart as soon as the emergency condition is rectified.
8. In the interests of national security, corporate jets are sometimes required to depart during what would be curfew hours to enable officials to attend critical meetings with regard to government contracts.
9. The departure of an aircraft used in fighting fires or to transport personnel to fight a fire.

EXHIBIT 2.

Office of City Attorney
CITY OF BURBANK
California

275 East Olive Ave.

Tel: 846-2141

849-1231

May 1, 1970

Mr. David M. Simmons
President

Lockheed Air Terminal
2627 North Hollywood Way
Burbank, California 91502

Dear Dave:

The list of emergency conditions justifying a jet departure during curfew hours furnished by your office appears reasonable and will be used by the Police Department at least for the time being. In addition, the 6:40 A.M. charter flight by Lockheed-California spe-

cialists to Palmdale each working day has been cleared as an emergency flight.

If there are any modifications, you will be notified.

Very truly yours,

SAMUEL GORLICK

City Attorney

SG:lh

cc: City Manager

Chief of Police

(Affidavit of Service omitted in printing).

EXHIBIT I

**Office of City Attorney
CITY OF BURBANK**

California

375 East Olive Ave.

Tel: 846-2141

846-1231

May 1, 1970

Mr. David M. Simmons

President

Lockheed A. Terminal

2627 North Hollywood Way

Burbank, California 91503

Dear David:

The list of emergency conditions following a list of parties during coffee hours furnished by your office appears reasonable and will be used by the Police Department at least for the time being. In addition, the 8:40 A.M. charter flight by Lockheed-California spe-

Complaint of Intervening Plaintiff Air Transport Association of America.

(Title omitted in printing).

Filed: July 8, 1970.

Intervening plaintiff AIR TRANSPORT ASSOCIATION OF AMERICA alleges as follows:

1. Paragraphs 1 through 21, inclusive, and 23 through 26, inclusive, of plaintiff's complaint are adopted and incorporated herein by reference:

2. Air Transport Association of America ("ATA") is an unincorporated trade association, the members of which include virtually all United States scheduled air carriers. Among its 32 members are the following scheduled air carriers which use Hollywood-Burbank Airport:

(a) Air West, Inc., which conducts regularly scheduled interstate jet flights to and from Hollywood-Burbank Airport under authority of a certificate of public convenience and necessity issued by the Civil Aeronautics Board;

(b) Continental Air Lines, which plans to commence regularly scheduled interstate jet flights to and from Hollywood-Burbank Airport on or about August 29, 1970, under authority of a certificate of public convenience and necessity issued by the Civil Aeronautics Board;

(c) United Air Lines, Inc., which uses and has used Hollywood-Burbank Airport as an alternate in the event that whether or other conditions prevent landing at Los Angeles International Airport;

(d) Western Air Lines, Inc., which has used and uses Hollywood-Burbank Airport as an alternate in the event that weather or other condi-

tions prevent operations at Los Angeles International Airport.

3. The Federal Aviation Act of 1958, 72 Stat. 737 (1958), as amended, 49 U.S.C. § 1301, *et seq.* (1964), provides, among things, as follows with reference to navigable airspace and air commerce:

(a) By § 104 of said Act, there is "recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States," said "navigable airspace" being defined by § 101(24) of the Act to mean "airspace above the minimum altitudes of flight prescribed by regulations issued under this Act, and shall include airspace needed to insure safety in take-off and landing of aircraft."

(b) By § 611 of said Act, added by Public Law 90-411, 82 Stat. 395 (1968), the Administrator of the Federal Aviation Administration is required to prescribe and amend such standards, rules and regulations as he may find necessary for the control and abatement of aircraft noise. In prescribing and amending such standards, rules and regulations the Administrator is required, among other things, to consider whether any proposed standard, rule or regulation is consistent with the highest degree of safety in air commerce and whether it is economically reasonable, and technologically practicable and appropriate for the particular type of aircraft or aircraft engine to which it will apply.

(c) Under §§ 102(a) (b) and (e) of said Act, the Civil Aeronautics Board is required to consider "as being in the public interest and, in

accordance with the public convenience and necessity," among other things, (i) the "encouragement and development of the air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense," (ii) the "regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers," and (iii) the "promotion of safety in air commerce."

(d) Under §§ 103(c) and (e) of said Act and under § 6(c)(1) of the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C.A. § 1655(c)(1) (1966), the Administrator of the Federal Aviation Administration is required to consider, "as being in the public interest," among other things, the "control of the use of navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both" and the "development and operation of a common system of air traffic control and navigation for both military and civil aircraft."

(e) Under § 307(a) of said Act and under § 6(c)(1) of the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C.A. § 1655(c)(1) (1966), the Administrator of the Federal Aviation Administration is "authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign

by rule, regulation, or order the use of the navigable airspace under such terms, conditions and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace."

(f) Under § 307(c) of said Act and under § 6(c)(1) of the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C.A. § 1655(c)(1) (1966), the Administrator of the Federal Aviation Administration is "authorized and directed to prescribe the air traffic rules and regulations governing the flight of aircraft, for the navigation, protection and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects."

(g) Under §§ 602, 603 and 604 of said Act and under § 6(c)(1) of the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C.A. § 1655(c)(1) (1966), the Administrator of the Federal Aviation Administration is authorized to issue air carrier operating certificates, airman certificates, and aircraft certificates, including airworthiness certificates.

(h) Under § 308 of said Act and under § 6(c)(1) of the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C.A. § 1655(c)(1) (1966), the Administrator of the Federal Aviation Administration is authorized to recommend and certify that a landing area or facility is rea-

sonably necessary for use in air commerce or in the interests of national defense.

(i) Under § 312(b) of said Act and under § 6(c)(1) of the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C.A. § 1655-(c)(1) (1966), the Administrator of the Federal Aviation Administration is "empowered to undertake or supervise such developmental work and service testing as tends to the creation of improved aircraft, aircraft engines, propellers, and appliances."

(j) Under § 401 of said Act, the Civil Aeronautics Board is authorized to issue certificates of public convenience and necessity with respect to airline routes and services.

(k) Once a certificate is granted to an airline, §§ 404(a) and (j) of said Act require the airline to render "safe and adequate service" and prohibit its abandoning "any route or part thereof" without the permission of the Civil Aeronautics Board.

(l) By virtue of §§ 401(1) and 405(a) of said Act, airlines are under a federal obligation to transport mail when so authorized by their certificates, and the Postmaster General is authorized to make necessary regulations for the safe and expeditious carriage of mail by aircraft.

4. The Administrator of the Federal Aviation Administration has issued certificates, promulgated extensive rules and regulations, made recommendations, and undertaken developmental work on aircraft as authorized by the Federal Aviation Act. On September 27, 1961, the Administrator issued an amendment to 14

C.F.R. § 60.18 (now 14 C.F.R. § 91.87), which is applicable to all traffic in the vicinity of airports with control towers and which has the purpose, among others, of aiding in the "abatement of aircraft noise as it affects adjacent communities." 26 Fed. Reg. 9069. The Postmaster General has issued regulations regarding carriage of mail by aircraft as authorized by the Act. The Civil Aeronautics Board has issued certificates of public convenience and necessity, as authorized by the Act.

5. Each of the members of ATA which conduct scheduled operations to and from Hollywood-Burbank Airport do so under authority of a certificate of public convenience and necessity issued by the Civil Aeronautics Board. Each of the members of ATA which use Hollywood-Burbank Airport is a holder of an air carrier operating certificate issued by the Administrator of Civil Aeronautics (now Administrator of the Federal Aviation Administration) specifying each is "properly and adequately equipped and able to conduct a safe operation as an air carrier of persons, property, and mail in scheduled air transportation." Every aircraft operated by these carriers holds an airworthiness certificate from the Administrator of the Federal Aviation Administration approving its use on certificated operations. Every pilot operating said aircraft holds a valid and effective airman's certificate issued by the Federal Aviation Administration. These carriers are authorized and required to transport mail by their certificates of public convenience and necessity.

6. Pursuant to §51(b) of the Airport and Airway Development Act of 1970, Public Law 91-256,

Stat. (May 21, 1970) and as a part of the national plan to develop airports and airways adequate to meet present and future needs, the Administrator of the FAA is authorized to issue airport operating certificates to airports serving air carriers certificated by the CAB. Airports to which this provision is applicable (such as Hollywood-Burbank Airport) are required to obtain such certificate within two years.

7. The federal government (through the Federal Aviation Act of 1958 and the Federal Airport Act, and through the orders and regulations of the Civil Aeronautics Board, the Federal Aviation Administration, and the Postmaster General) has preempted the fields of the control and regulation of the use of the navigable airspace and the control and regulation of aircraft operations by any and all means. Therefore, the ordinance of the City of Burbank which prohibits the takeoff of jet aircraft between 11:00 P.M. and 7:00 A.M. ("curfew ordinance"), thereby restricting the use of navigable airspace and outlawing certain aircraft operations, is invalid and void as applied to the scheduled air carrier members of ATA and others.

8. All flights of aircraft operated by the scheduled air carrier members of ATA into and out of Hollywood-Burbank Airport are within the navigable airspace as defined in Section 101(24) of the Federal Aviation Act of 1958, 72 Stat. 737 (1958), 49 U.S.C. § 1301(24) (1964), and are conducted in accordance with the federal rules and regulations promulgated pursuant to said Act. Restriction and limitation of these flights by the curfew ordinance of the City of Burbank would be contrary to the public right of free transit through the navigable airspace, would be in direct and open conflict with federal statutes and federal regula-

tions, would disrupt passenger and freight service now conducted pursuant to federal certification, would impede the use of aircraft designed and constructed according to the best and latest technological advances and approved and certificated by the United States, would interfere with the orderly operation of the postal establishment, and would result in irreparable injury and damage to the business and property of these air carrier members of ATA. Accordingly, said curfew ordinance is invalid and void because of the supremacy of federal laws and regulations as declared in Article VI, Clause 2, of the Constitution of the United States.

6. Enforcement of said curfew ordinance of the City of Burbank would unduly and unreasonably burden, hinder, and restrain interstate commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, and therefore said ordinance is invalid and void as applied to the air carrier members of ATA and others.

WHEREFORE, this intervening plaintiff prays:

1. That the curfew ordinance and each and every part and section thereof be declared to be unconstitutional, illegal and void;
2. That the defendant City of Burbank and the individual defendants and each of them in their respective capacities as officials of the City of Burbank charged with the enforcement of the provisions of the aforesaid ordinance, their representatives, agents, servants, employees, attorneys and successors be enjoined and restrained by a permanent order of injunction of this Court from taking any action in pursuance of said ordinance; and

3. For such further and other relief as the Court may deem just and proper.

DATED: July 8, 1970.

**O'MELVENY & MYERS
WARREN CHRISTOPHER
HENRY C. THUMANN
RALPH W. DAU**

**By /s/ Warren Christopher
Warren Christopher**

**Attorneys for Intervening Plaintiff
Air Transport Association of America**

(Affidavit of Service omitted in printing).

**Answer to Complaint of Intervening Plaintiff
Air Transport Association of America**

(Title omitted in printing).

Filed: July 22, 1970.

Come now Defendants **THE CITY OF BURBANK**, a municipal corporation; **DR. JARVEY GILBERT**, Mayor; **ROBERT R. MCKENZIE**, Vice Mayor; Councilman **GEORGE W. HAVEN**; Councilman **ROBERT A. SWANSON**; Councilman **D. VERNER GIBSON**, **JOSEPH N. BAKER**, City Manager, **SAMUEL GORLICK**, City Attorney for the City of Burbank and **REX R. ANDREWS**, Chief of Police of the City of Burbank, and in answer to the Complaint of Intervening Plaintiff **AIR TRANSPORT ASSOCIATION OF AMERICA**, deny, admit and allege as follows:

I.

In answer to paragraph 1 of said Complaint, Defendants adopt and incorporate herein by reference Paragraphs I, II, III, IV, V, VI, VII, VIII, X, XI, XII and XIII of their Answer to the Complaint of Plaintiffs **LOCKHEED AIR TERMINAL, INC.** and **PACIFIC SOUTHWEST AIR LINES** on file herein.

II.

Answering Paragraph 2 of said Complaint, Defendants admit that Plaintiff **AIR TRANSPORT ASSOCIATION OF AMERICA** ("ATA") is an unincorporated trade association, the members of which include scheduled air carriers using the Hollywood-Burbank Airport; that Air West, Inc., conducts regularly scheduled interstate jet flights between Hollywood-Burbank Airport and Las Vegas, Nevada, and that United Air Lines, Inc. and Western Air Lines, Inc. have used the Hollywood-Burbank Airport when weather conditions prevented landing at Los Angeles International Airport;

and as to the remainder of the allegations contained in said Paragraph, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations and placing their denial on that ground, deny each and every allegation therein contained not herein specifically admitted to be true.

III.

Answering Paragraph 5 of said Complaint, Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Paragraph and placing their denial on that ground, deny each and every allegation and statement contained in said Paragraph 5.

IV.

Answering Paragraph 6 of said Complaint, Defendants admit and allege that by the Airport and Airway Development Act of 1970, Public Law 91-258, 84 Stat. 219 (May 21, 1970), the Secretary of Transportation, among other things, was directed to prepare and publish a national airport system plan for the development of public airports in the United States owned and controlled by public agencies and to make grants therefor if, among other things, appropriate action has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft; that said Act further declares it to be the national policy that airport development projects authorize pursuant to said Act shall provide for the protection and enhancement of the natural resources and the quality of environment of the nation; that Section 51(b) of said Act authorizes the Administrator of the Federal

Aviation Administration to issue airport operating certificates to airports serving air carriers certified by the Civil Aeronautics Board and to establish minimum safety standards for the operation of such airports and that before an airport operating certificate may be issued the Administrator must find, after investigation, that the airport is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations and standards prescribed thereunder; and that airports, including the Hollywood-Burbank Airport, if they wish to continue to serve air carriers certificated by the Civil Aeronautics Board, must obtain such a certificate within two years after May 21, 1970; and further answering said Paragraph deny each and every allegation and statement therein contained not herein specifically admitted to be true.

V.

Answering Paragraph 7 of said Complaint, Defendants deny each and every allegation and statement therein contained.

VI

Answering Paragraph 8 of said Complaint, Defendants admit that all flights of aircraft operated by scheduled air carriers into and out of Hollywood-Burbank Airport are required to be conducted in accordance with the Federal rules and regulations promulgated pursuant to the Federal Aviation Act of 1958, as amended, and further answering said Paragraph deny each and every allegation and statement therein contained not herein specifically admitted to be true.

VII

Answering Paragraph 9 appearing on page 9 of said Complaint (erroneously numbered Paragraph 6), Defendants deny each and every allegation and statement therein contained.

WHEREFORE, Defendants pray that intervening plaintiff AIR TRANSPORT ASSOCIATION OF AMERICA take nothing, by its Complaint and that they be hence dismissed with their costs.

DATED this 21st day of July, 1970.

SAMUEL GORLICK, City Attorney,
and RICHARD L. SIEG, JR.,

Asst. City Atty.

By /s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr.

Attorneys for all defendants except

Samuel Gorlick

/s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr., Attorney

for defendant Samuel Gorlick

(Affidavit of Service omitted in printing).

Pretrial Conference Order.

(Title omitted in printing).

Lodged July 22, 1970.

Filed: July 27, 1970.

Following pretrial proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court;

IT IS ORDERED:

I. A. *Nature of action.*

This is an action for declaratory relief and injunction seeking to invalidate an ordinance of the City of Burbank which prohibits jet aircraft from taking off from the Hollywood-Burbank Airport between the hours of 11:00 P.M. and 7:00 A.M.

B. *Parties.*

1. *Plaintiffs:* Lockheed Air Terminal, Inc., a corporation, and Pacific Southwest Airlines ("PSA") a corporation.

2. *Intervening Plaintiff:* Air Transport Association of America ("ATA"), an unincorporated trade association.

3. *Defendants:* The City of Burbank, a municipal corporation; Dr. Jarvey Gilbert, Mayor; Robert R. McKenzie, Vice Mayor; George W. Haven, Councilman; Robert A. Swanson, Councilman; D. Verner Gibson, Councilman; Joseph N. Baker, City Manager; Samuel Gorlick, City Attorney; Rex R. Andrews, Chief of Police.

C. *The pleadings which raise the issues are:*

1. Complaint for Declaratory Relief and Injunctive Relief, filed May 14, 1970;

2. Answer to Complaint for Declaratory Relief and Injunctive Relief, Filed June 4, 1970;

3. Complaint of Intervening Plaintiff Air Transport Association of America, filed July 8, 1970;

4. Answer to Complaint of Intervening Plaintiff, to be filed by the City of Burbank.

II. Federal jurisdiction and venue are invoked upon the grounds:

A. Federal question and amount in controversy (28 U.S.C. § 1331 (a)).

This action arises under the Federal Aviation Act of 1958, 72 Stat. 737 (1958), as amended, 49 U.S.C.A. §§ 1301-1542; the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C. §§ 1651-1659 (Supp. IV 1969); The Airport and Airway Development Act of 1970, Public Law 91-258, Stat. (May 21, 1970); the Constitution of the United States, Article 5, Section 8, Clause 3 (the Commerce Clause), and Article III, Section 2 (the Supremacy Clause). The matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs.

B. Commerce regulations (28 U.S.C. § 1337).

This action arises under those Acts of Congress regulating commerce, cited in section II. A, *supra*.

C. All defendants reside in, and the claim arose in, this Judicial District.

III. The following facts are admitted and require no proof:

1. Plaintiff Lockheed Air Terminal, Inc. (hereinafter "Lockheed"), is a corporation organized and

existing under and pursuant to the laws of the State of Delaware and is doing business in the County of Los Angeles, State of California. Lockheed, at all times material herein, was and is the owner and operator of the Hollywood-Burbank Airport.

2. Plaintiff Pacific Southwest Airlines (hereinafter "PSA") is a corporation organized and existing under and pursuant to the laws of the State of California and is doing business in the County of Los Angeles, State of California.

3. Intervening plaintiff Air Transport Association of America (hereinafter "ATA") is an unincorporated trade association, the members of which include virtually all United States scheduled interstate air carriers. Among its 32 members are the following scheduled air carriers which use Hollywood-Burbank Airport: Air West, Inc.; United Air Lines, Inc.; Western Air Lines, Inc. Among its other members is Continental Air Lines, Inc., which obtained authority pursuant to Civil Aeronautics Board Order No. 70-5-52, issued May 12, 1970, "to engage in air transportation with respect to persons, property, and mail . . . between the terminal point Seattle-Tacoma, Wash., the intermediate points Portland, Oreg., and San Francisco-Oakland-San Jose, Calif. (to be served through the Metropolitan Oakland International Airport and the San Jose Municipal Airport), and the terminal point Los Angeles-Ontario-Long Beach-Hollywood-Burbank-Santa Ana-Orange County, Calif. (to be served through the Ontario International Airport, the Long Beach Municipal Airport, the Hollywood-Burbank Airport, and the Orange County Airport)."

4. The City of Burbank is a municipal corporation in the County of Los Angeles, State of California, having power to sue and be sued in its own name;

Dr. Jarvey Gilbert is the duly elected Mayor of the City of Burbank;

Robert R. McKenzie is the duly elected Vice Mayor of the City of Burbank;

George W. Haven, Robert A. Swanson and D. Verner Gibson are duly elected Councilmen for the City of Burbank;

Joseph N. Baker is the City Manager of the City of Burbank;

Samuel Gorlick is the City Attorney for the City of Burbank;

Rex R. Andrews is the Chief of Police of the City of Burbank.

5. The defendants, Gilbert, McKenzie, Haven, Swanson and Gibson, constitute the City Council for the City of Burbank and have the authority to enact and enforce ordinances for the regulation of specified matters within the City of Burbank. Defendant Gorlick and the attorneys within his office have the responsibility of prosecuting violations of ordinances and other misdemeanors within the City of Burbank. The defendant, Rex R. Andrews, as Chief of Police, is responsible for and oversees the enforcement of municipal ordinances including the ordinance here in question.

6. Hollywood-Burbank Airport was dedicated May 30, 1930 and has been in continuous use since that time by both private and commercial aircraft. The Airport provides services to regularly scheduled commercial aircraft as well as to privately owned corporate and general aviation aircraft. Hollywood-Burbank Airport

occupies approximately 535 acres, approximately 128 of which are owned by the United States Government. The Airport lies mainly in the City of Burbank and partially in the City of Los Angeles.

7. The City of Burbank has a population of approximately 95,000.

8. On March 31, 1970 the City Council of the City of Burbank duly and regularly adopted Ordinance No. 2216, which added Section 20-32.1 to the Burbank Municipal Code providing as follows:

"Sec. 20-32.1 Aircraft Take-Offs.

"(a) Pure Jets Prohibited from Taking Off Between 11:00 P.M. and 7:00 A.M.

"It shall be unlawful for any person at the controls of a pure jet aircraft to take off from the Hollywood-Burbank Airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

"(b) Airport Operator Prohibited from Allowing Take-Offs.

"It shall be unlawful for the operator of the Hollywood-Burbank Airport to allow a pure jet aircraft to take off from said airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

"(c) Exception: Emergencies.

"This section shall not apply to flights of an emergency nature if the City's Police Department is contacted and the approval of the Watch Commander on duty is obtained before take-off."

and said ordinance became effective on May 4, 1970. The stated purpose of the ordinance is "to prohibit pure jet take-offs at the Hollywood-Burbank Airport between 11:00 P.M. and 7:00 A.M."

9. The defendant officials of the City of Burbank have publicly announced their intention to enforce the curfew ordinance.

10. As a result of the process of industrialization and urbanization, almost one out of every twenty people in the United States lives in the Los Angeles five-county area.

11. Hollywood-Burbank Airport is the most convenient airport for the entire San Fernando Valley, Hollywood, and the cities of Burbank, Glendale, Pasadena, and Alhambra, an area containing a population of over 2.2 million persons.

12. Hollywood-Burbank Airport has two principal runways for the operation of aircraft. These runways are designated by their compass heading in tens of degrees.

(a) The "north-south" runway is situated on an axis of 330° - 150° . This runway is designated Runway 33 when it is used by aircraft taking off to the northwest or landing from the southeast, and, Runway 15 when it is used by aircraft landing from the northwest or taking off to the southeast. Approximately 2,050 feet of the northernmost portion of this runway lie in the City of Los Angeles on land owned by the United States Government.

(b) The "east-west" runway is situated on an axis of 070° - 250° . This runway is designated Runway 7 when it is used by aircraft landing from the west or taking off to the east, and, Runway 25 when it is used by aircraft landing from the east or taking off to the west. Approximately 2,250 feet of the westernmost portion of this runway lie on land owned by the United States Government.

(c) Aircraft landing on Runways 7 and 15 and aircraft departing on Runways 25 and 33 do not overfly the City of Burbank.

13. The following types of pure jet commercial aircraft operate from the Hollywood-Burbank Airport: Boeing 727, Boeing 737, Douglas DC-9. The following types of pure jet business aircraft operate from the Airport: Jetstar, Gulfstream II, Sabreliner, Lear Jet, DeHavilland and Falcon.

14. Each scheduled interstate air carrier that uses Hollywood-Burbank Airport holds a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board which provides as set forth in said Certificate.

15. PSA holds a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission which provides as set forth in said Certificate.

16. Each scheduled interstate air carrier that uses Hollywood-Burbank Airport holds an Air Carrier Operating Certificate issued by the Administrator of the FAA, which provides as set forth in said Certificate.

17. PSA holds a Commercial Operating Certificate issued by the Administrator of the FAA, which provides as set forth in said Certificate.

18. The Administrator of the FAA has issued Operations Specifications to each regularly scheduled air carrier that uses Hollywood-Burbank Airport, which Operations Specifications provide as set forth therein.

19. Air West operates Douglas DC-9 aircraft at Hollywood-Burbank Airport. United has operated and operates the following types of aircraft at Hollywood-

Burbank Airport: Boeing 727 and Boeing 737. Western operates and has operated Boeing 737 aircraft at Hollywood-Burbank Airport. PSA operates the following types of aircraft at Hollywood-Burbank Airport: Boeing 727, Boeing 737 and Douglas DC-9.

20. Each pilot of a civil aircraft of United States registry operated in the navigable airspace of the United States is required to have in his personal possession a current pilot certificate issued by the Administrator of the FAA (FAR 61.3(a)). Each pilot of an aircraft operated by a scheduled air carrier at Hollywood-Burbank Airport is required to hold a current air transport pilot certificate issued by the Administrator (FAR 61.161). Each flight engineer of a civil aircraft of United States registry is required to have in his personal possession a current flight engineer's certificate issued by the Administrator (FAR 63.3(b)).

21. Pursuant to newly enacted federal legislation, Hollywood-Burbank Airport is required to apply for an Airport Operating Certificate issued by the Administrator of the FAA pursuant to Section 51(b) of the Airport and Airway Development Act of 1970, Public Law 91-258, Stat. (May 21, 1970), within two years from the date of enactment.

22. The FAA operates the Airport Traffic Control Tower and Radar Approach and Departure Control at Hollywood-Burbank Airport. In connection with such operation the FAA has expended approximately \$2 million on the installation of navigational aids at Hollywood-Burbank Airport, including the Instrument Landing System ("ILS"), runway and identification lights, and radar and radio equipment.

23. Pursuant to the Federal Aviation Act of 1958, 49 U.S.C. §1301, *et seq.*, the Administrator of the FAA has determined that there exists a need for a system that will provide adequate separation between and orderly control of the air traffic emanating from points within and without the United States and converging on large metropolitan areas and airports, such as Hollywood-Burbank Airport. Accordingly, the Administrator has established a system for the control of air traffic which provides for such separation, and which operates within controlled airspace identified as "control zones" and "control areas." Control zones encompass all the airspace from the surface to infinity within five miles of the geographical center of an airport. Control areas are of varying elevations and dimensions, and include the area surrounding Hollywood-Burbank Airport. The airspace within a control zone below an altitude within 2,000 feet above the surface is defined as the airport traffic area (FAR 1.1). Hollywood-Burbank Airport is located under a control area, within an airport traffic area, within a control zone and under many converging Federal airways, all of which have been established by the Administrator of the FAA pursuant to statutory authority. Unless otherwise authorized by FAA Air Traffic Control, a pilot operating within an airport traffic area must maintain two-way radio communication with the control tower (FAR 91.87(b)). He is further required to comply with all clearances and instructions that may be issued by Air Traffic Control (FAR 91.75(b)). Air Traffic Control over the aircraft within the Hollywood-Burbank Airport Control Zone including approach control and departure control, is exercised by FAA personnel located in the control tower situated at the airport. Except when in direct

communication with the control tower, each regularly scheduled air carrier is required by its Operations Specifications to operate its jet aircraft in accordance with FAA Instrument Flight Rules ("IFR"). When not under the control of an FAA airport control tower, aircraft operating under IFR are under the direct control of an FAA Air Route Traffic Control Center and are required to comply with the clearances received from that facility. (FAR 91.115; 91.75(a)).

24. Prior to the commencement of operations involving jet aircraft landings and take-offs on the two runways at Hollywood-Burbank Airport, a determination was made by the FAA that such use of each runway would not be unsafe either to persons or property on the ground or to persons and property in the air.

25. No aircraft may taxi at or take off from Hollywood-Burbank Airport without first receiving an appropriate clearance from Air Traffic Control (FAR 91.87(h)). When a commercial jet aircraft is ready for departure from its terminal gate, it makes radio contact with Air Traffic Control. It is at that time assigned a runway for take-off and is ultimately given clearance to taxi thereto. Prior to taking its position on the runway, the aircraft is given departure clearance, which includes the assignment of departure procedures and assignment of a radio beam intersection to which the aircraft is directed to fly. On receiving its clearance to take off, each jet or other large aircraft is required to conform with all FAA take-off procedures and to climb to an altitude of 1,500 feet above the airport surface as rapidly as practicable. (FAR 91.87(f)) Departure clearances for IFR aircraft incorporate standard instrument departure procedures established for Hollywood-Burbank Airport by the FAA.

Pictorial charts showing these standard instrument departure procedures are published by the Department of Commerce, United States Coast and Geodetic Survey. Aircraft taking off from Hollywood-Burbank Airport must conform with the assigned FAA departure clearance including all standard IFR departure procedures incorporated therein (FAR 91.75(a), 91.116). Upon reaching an altitude and position clear of other traffic, control of the aircraft is passed from Hollywood-Burbank Departure Control to the FAA Air Route Control Center located at Palmdale, California.

26. On entering and operating within the Hollywood-Burbank Airport Traffic Area, jets and other large aircraft must be operated at an altitude of at least 1,500 feet except when further descent is required for a safe landing. (FAR 91.87(d)(2)) No aircraft may be landed at Hollywood-Burbank Airport without first receiving an Air Traffic Control clearance (FAR 91.87(h)). In addition to exercising approach control, the FAA maintains and operates an Instrument Landing System ("ILS") which electronically establishes a three-degree glide slope to Runway 7 at Hollywood-Burbank Airport. Each of the aircraft operated by the regularly scheduled air carriers is equipped with electronic devices that monitor the ILS glide slope and depict the glide slope position in relation to that of the aircraft on the cockpit instrument. On receiving FAA clearance to approach for landing, the aircraft is required to be at or above the glide slope at the outer ILS marker and to remain at or above the glide slope until reaching the middle ILS marker. (FAR 91.87(d)(2)) The outer marker is lo-

cated approximately 6.1 nautical miles from the approach end of Runway 7, while the middle marker is located approximately 1.8 nautical miles from the approach end of the runway. The glide slope altitude at the outer ILS marker is approximately 2,000 feet above the surface and at the middle marker is approximately 575 feet above the surface. As an additional means of approach control, the FAA prescribes standard instrument approach procedures which are published in Part 97 of the Federal Aviation Regulations. Pictorial approach and landing charts showing these standard instrument approach procedures are published by the Department of Commerce, United States Coast and Geodetic Survey. Approaches to Hollywood-Burbank Airport conducted under instrument flight rules are required to be in accordance with the standard instrument approach procedures set forth in Part 97 of the Federal Aviation Regulations (FAR 91.116).

27. In the interest of alleviating noise disturbances to the residents of communities adjoining airports located in metropolitan areas, the Administrator of the FAA has established regulations that (1) require turbine powered fixed wing aircraft, approaching for landing, to maintain within the airport traffic area an altitude of at least 1,500 feet above the surface of the airport "until further descent is required for a safe landing," and (2) require such aircraft, when taking off, to climb to 1,500 feet as rapidly as practicable (FAR 91.87(d), (f)).

28. From February 1968 until July 12, 1970, PSA operated a Boeing 727 aircraft which departed the Hollywood-Burbank Airport at 11:30 P.M. each Sunday night destined for San Diego. This was the

only regularly scheduled flight taking off from Hollywood-Burbank Airport between the hours of 11:00 P.M. and 7:00 A.M. This was an intrastate flight originating in Oakland, California with its final destination San Diego, California.

29. Since March 9, 1970 PSA has operated a Boeing 727 or Boeing 737 aircraft on charter to Lockheed California Company which aircraft departs from the Hollywood-Burbank Airport Monday through Friday at 6:40 A.M. destined for Palmdale. This flight is being permitted to operate by the City as an emergency flight.

30. Several fleets of corporate jet aircraft use Hollywood-Burbank Airport as their home base. Prior to the enactment of the curfew ordinance, there were at least three flights per week of corporate jet aircraft during the now-proscribed curfew period.

31. Lockheed Aircraft Corporation operates and maintains military defense plant facilities at Hollywood-Burbank Airport.

IV. The reservations as to the facts recited in paragraph III above are as follows:

Defendants reserve objections on the ground of materiality to the facts admitted in sub-paragraphs 14-27, inclusive, of paragraph III, *supra*.

V. The following facts, though not admitted, are not to be contested at the trial by evidence to the contrary:

1. Hollywood-Burbank Airport is the largest privately owned airport in the United States, from the standpoint of commercial air carrier operations.

2. In 1969 there were 32,984 flight operations to and from Hollywood-Burbank Airport. These move-

ments carried 584,970 revenue passengers arriving at the Airport and 593,311 revenue passengers departing from the Airport.

3. In 1969 there were 22,088 individual flight operations by Boeing 727, Boeing 737 and Douglas DC-9 jet aircraft at Hollywood-Burbank Airport.

4. The PSA flights, which departed the Hollywood-Burbank Airport at 11:30 P.M. each Sunday night destined for San Diego, served 120 passengers on the average with an average of 80 being boarded at Hollywood-Burbank.

VI. The following issues of fact, and no others, remain to be litigated upon the trial:

1. Whether Hollywood-Burbank Airport is an important part of the national air transportation system and forms a vital link in interstate and intrastate air commerce.

2. Whether in the Greater Los Angeles metropolitan area Hollywood-Burbank Airport is an important satellite airport which helps in relieving the congestion at Los Angeles International Airport.

3. Whether the federal statutes and regulations and orders of the Administrator of the Federal Aviation Administration and of the Civil Aeronautics Board have completely occupied the fields of the regulation of the use of navigable airspace and aircraft operations.

4. Whether the curfew ordinance affects the use of navigable airspace and aircraft operations.

5. Whether the curfew ordinance impedes the free flow of interstate commerce.

6. Whether the needs of national uniformity demand that the regulation of the use of airspace and air traffic be prescribed by a single authority.

7. Whether the curfew ordinance conflicts with federal statutes and regulations governing the use of navigable airspace or with aircraft operations at the Hollywood-Burbank Airport.

8. Whether the curfew ordinance interferes with the operation of the national air transportation system.

9. The above issues of fact represent a distillate of plaintiffs' and intervening plaintiff's contentions of fact, heretofore filed, and it is the intention of these parties to incorporate herein all of their contentions of fact that have not been admitted by defendants.

10. (a) Defendants contend that the following issue of fact also remains to be litigated upon the trial: Whether the regularly scheduled 11:30 P.M. Sunday flight of PSA and the irregular flights of privately owned jet aircraft, in taking off from Hollywood-Burbank Airport between the hours of 11:00 P.M. and 7:00 A.M., unreasonably interfered with the peace, quiet and sleep of persons residing in the vicinity of the airport and caused a detriment which far outweighed any advantage to the public or any private persons, firms or corporations departing by jet aircraft from the airport during curfew hours.

(b) Plaintiffs and intervening plaintiff contend that the above issue is not relevant to this action and reserve their objection on that ground to any evidence offered in support of this issue.

VII. The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto, are as follows:

1. The exhibits which the parties intend to offer are identified and set forth in their respective lists of ex-

hibits heretofore filed. The parties have reviewed each other's exhibit lists. Since these exhibits are for the most part official documents, counsel represent that they expect to find no difficulty in agreeing to the genuineness and due execution thereof. Counsel will promptly notify the Court in the event they are unable to reach such an agreement.

2. Plaintiffs and intervening plaintiff contend that defendants' Exhibit C is irrelevant for the purposes relied upon by defendants.

3. Plaintiffs and intervening plaintiff also contend that defendants' Exhibit C is hearsay.

VIII. The following issues of law, and no others, remain to be litigated upon the trial:

1. Whether the Federal Government has preempted the fields of regulation of the use of airspace and the regulation of air traffic so as to preclude enforcement of the curfew ordinance.

2. Whether enforcement of the curfew ordinance would result in an intolerable and unreasonable burden on interstate commerce in violation of the Commerce Clause (Art. I, § 8, Cl. 3) of the United States Constitution.

3. Whether the curfew ordinance constitutes an attempted regulation of a phase of the national commerce which, because of the need of national uniformity, demands that its regulation, if any, be prescribed by a single authority.

4. Whether the curfew ordinance is in conflict with federal statutes or federal regulations and is rendered void and unenforceable by the Supremacy Clause (Art. III, § 2) of the United States Constitution.

5. Whether this Court should abstain from exercising its jurisdiction and power until state issues are finally determined.

IX. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

July 27, 1970

/s/ E. Avery Crary
United States District Judge

Approved as to form and content:

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Reporters' Transcript of Proceedings.

Filed: Jan. 29, 1971.

[4] LOS ANGELES, CALIFORNIA, TUESDAY, SEPTEMBER 15, 1970, 9:40 A.M.

THE CLERK: 70-1075, Lockheed Air Terminal v. The City of Burbank; court trial.

MR. PACKARD: Ready for the plaintiff Lockheed Air Terminal, Inc., a corporation, and Pacific Southwest Air Lines, a corporation.

MR. CHRISTOPHER: Warren Christopher for intervening plaintiff, Air Transport Association of America.

MR. SIEG: Ready for the defendant, your Honor.

MR. YOST: Ready for the amicus, your Honor.

THE COURT: Gentlemen, I am sorry I didn't get word to you I was going to be a few minutes late this morning. I went to a breakfast meeting of the State Bar and didn't get word to you last night, as we had a judges' meeting in the afternoon that went longer than I had expected.

All right. Now, let's refer as we start this matter to the issues involved, issues of law involved, as set forth in the pretrial order, and to refresh everybody's mind on them, as I understand the issues—they may not be exactly as you phrased them in the pretrial order, but substantially so.

One, has the Federal Aviation Administration so pre-empted, or the Government so pre-empted the field of [5] efficient use of airspace as to bar the enforcement of the Burbank ordinance.

Do you agree substantially that that is one of the issues?

MR. PACKARD: Yes, your Honor.

MR. CHRISTOPHER: Yes, your Honor.

MR. SIEG: Yes.

THE COURT: Does anybody disagree, let's say.
(No response.)

THE COURT: All right. Then as a part of that issue it seems to me that the question I have to determine is, is the ordinance in conflict with any federal legislation or regulation?

Isn't that really the chief issue I have to determine? Or, let's say, one of the chief issues. Does anybody disagree with that?

No. 3, as I see it, is, does the ordinance discriminate against or substantially obstruct or unreasonably burden interstate commerce.

As I see the issues, those are the chief issues I have to determine. If anybody disagrees I think we should state it now so we can discuss it further, and let's focus on those issues as we proceed to trial and the evidence unfolds.

Do any of the defendants contend that the [6] FAA does not have authority to act in the fields involved in this case? That they don't have authority. Not the question of have they pre-empted the field, but does anybody contend, any of the defendants contend they do not have the authority to act in this field?

MR. SIEG: Yes, your Honor, we so contend.

THE COURT: The City of Burbank contends they do not have the authority to act in this field.

MR. SIEG: That is correct, sir.

THE COURT: All right. Is there any issue as to whether a proprietor of an airfield—without regard to Burbank, not being a proprietor—but the proprietor of the airfield could issue an order of this nature? Not being an ordinance but an order of this nature.

What is the plaintiffs' reaction to that?

MR. CHRISTOPHER: Your Honor, I think that is an unresolved question of law that is not determined by the existing cases, but which is not involved in this proceeding.

THE COURT: Not strictly involved, no. I think you are right. It is not strictly involved, but we are going to have some collateral matters and going to have some reason from inference, and so forth.

I am wondering, do you have any position on it, with respect to a proprietor, what is the authority of a proprietor?

[7] **MR. CHRISTOPHER:** Your Honor, as I intimated in my earlier remarks, I believe that is an open question of law.

THE COURT: All right.

MR. CHRISTOPHER: And I believe the scope of the federal pre-emption, which may in some instances of air traffic control and airspace management be so pervasive as to prevent the action of even a proprietor.

But I emphasize again, I don't believe that question is here.

THE COURT: Not as such.

MR. PACKARD: Your Honor, I think in that field we have to look as if we were talking about an airport that has interstate commerce coming in as distinguished from the Stagg case, which we are familiar with, and also when you make the broad statement, may a proprietor regulate the operation of an airfield, I think we have to look at the particular airfield and what we are talking about—

THE COURT: I think that is probably true.

MR. PACKARD: —rather than a general statement as to what the law would be on a general statement.

THE COURT: There are going to be cases and I am sure there is going to be discussion of this point.

Not that it is involved in this case as such, but inferentially [8] there is going to be discussion of this point, I feel sure, before we get through. Possibly not. If it isn't raised, my prediction is that you will be differentiating cases on that ground. Maybe you will not, I don't know. We will see how it develops.

MR. PACKARD: I think in the Stagg case they had discussed, or in viewing the Stagg case there has been certain Senate statements to the effect that a proprietor of an airport may regulate its own hours of flight and so forth, and there is language in some of these reports which are before your Honor to that effect.

I concur and agree with Mr. Christopher that that issue is not before this court and it hasn't been raised as an issue in this case, but it may be a collateral issue, which may—

THE COURT: It would be a collateral issue, I believe. Don't you distinguish the Stagg case on that ground?

MR. PACKARD: Yes, definitely, that is right.

THE COURT: So there we are, right away we are starting out with it as a collateral issue. I know it is not an issue. I have stated the three issues as I see them.

Does either side care to make an opening [9] statement?

MR. PACKARD: Your Honor, I feel that insofar as the briefs heretofore that have been filed on behalf of the plaintiffs and plaintiff in intervention and the FAA, I feel there is no point in making an opening statement.

THE COURT: Anyone else?

MR. CHRISTOPHER: Yes.

THE COURT: All right, Mr. Christopher.

**OPENING STATEMENT ON BEHALF OF THE
INTERVENING PLAINTIFF**

MR. CHRISTOPHER: I would make a brief opening statement on behalf of the intervening plaintiff.

First, your Honor, as a preliminary matter I might say that the witness list on both sides has been substantially reduced, and it seems clear, so far as I can estimate, that we will be able to finish the case within the time that has been estimated. I believe we will be calling only five or six witnesses and I notice the defendants' witness list is now down to two.

THE COURT: Very well.

MR. CHRISTOPHER: I recognize, of course, your Honor, you have read and studied the papers filed, including our trial brief, and I don't intend to repeat the arguments there. Your statement of this morning shows [10] that you are fully familiar with them. Nor do I think it is necessary to go over the facts which have been set forth in the pretrial order and which are admitted for purposes of this proceeding.

In this opening statement, your Honor, I would refer briefly to the proof which will be adduced to show the severe national impact which will follow if a night curfew ordinance is imposed at Burbank and if, indeed, it were to be imposed at comparable airports across the nation.

Introducing this point, your Honor, I want to emphasize that my view of the cases is clear. The court could not consider, should not consider the Burbank ordinance in isolation. Burbank is an airport with scheduled interstate and intrastate operations and under the cases I believe the court should consider the effect of this ordinance as if it were imposed at all airports with comparable operations.

In the Hempstead case, which we cited in our trial brief, page 32, one of the leading cases here,—

THE COURT: That is an altitude case.

MR. CHRISTOPHER: Yes, sir.—the court said that it could not consider the ordinance in—and this is the court's phrase and I think it is a valuable one—"in the accident of its particular circumstances [11] but, rather, must consider it as if there were a set of ordinances, which taken together would prevent diversion of the aircraft elsewhere other than the town of Hempstead."

The same national consequences rule was indicated in the Southern Pacific case, which is cited in our trial brief on page 32, where the court noted, "If one state could regulate train lengths so might all with adverse national consequences." Indeed; this approach of viewing the national consequences of local ordinances or local action has been followed since 1906 in the commerce field, your Honor, followed since the Mississippi Railroad Commission case, which is also cited in our trial brief at pages 31 and 32, where the court said that if a fast train could be required to stop in the town of Magnolia, Mississippi, it could be required to stop at every small town in the state with adverse national consequences.

[12] Now, it is common knowledge that the areas surrounding the major airports are a checkerboard of overlapping and conflicting political jurisdictions.

This is illustrated by the leading cases: The Town of Hempstead case around J.F.K. Airport; City of Audubon Park case surrounding—around the Louisville Airport; the Village of Cedarhurst case involving, again, J.F.K.; the Loma Portal Civil Association case involving an attempt of a civic group to impose re-

restrictions on flight operations at Lindbergh Field in San Diego.

The net effect of these precedents and the factual situation is that if the court were to hold that Burbank could enforce the curfew ordinance, others would follow, for this is a contagious kind of an action. We believe that the court should consider the national effect on the assumption that similar ordinances would be imposed at all comparable airports.

These national effects, your Honor, the testimony will show, are severe and adverse. We will show that if a night curfew were imposed at all airports with scheduled operations comparable to Burbank Airport, more than 1,000 flights every day would be in violation of such ordinances. Not 1,000 a year or 1,000 a month, but 1,000 flights every day would be in violation of such ordinances.

We will show that not only would those 1,000 [13] be affected but many more would have to be canceled or altered in order to balance the aircraft usage and operation.

Now, out of these cancellations or adjustments would come, the evidence will show, your Honor, severe inconvenience and hardship to passengers all over the country who must or desire to travel at night.

It would result, the evidence will show, in frustration to shippers who depend upon night flights to deliver their products, especially perishable goods and time-dated products.

The evidence will show that the scheduling situation would be thrown into near chaos, aggravated as it is by the six time zones which mark our country.

Another result, the evidence will show, your Honor, of such cancellation would be to increase congestion

in the very hours in which the airways are now most congested, the hours of early evening.

The evidence will also show that the application of such ordinances on a national basis would have most adverse effect on the maintenance programs, finely tuned maintenance programs of the airplanes.

Moreover, your Honor, we will show that such an imposition of ordinances on a national basis would impose an enormous economic penalty on the airlines which are already in severe economic condition.

[14] Finally, your Honor, on this point we will show that based upon a study at the four major airports in this country more than 48 percent of all airmail moves during the curfew hours. If these ordinances were extended on a national basis, the mail could not move at night and would be delayed at least one day.

Our evidence will show the severe economic effect, especially for the financial industry, of such a curtailment of airmail service.

Now, your Honor, these adverse national consequences are, we think, relevant on each of the three issues that your Honor has stated as being before the court.

On the pre-emption point, we think the severe adverse national consequences show that the federal interest is so dominant as to preclude local action by ordinance.

On the supremacy clause issue, your Honor, which you stated is the second issue, we think these adverse national consequences show the need in the most urgent terms for a federal system with a single uniform rule.

Finally, on the third issue that your Honor stated, the commerce clause issue, we think these adverse na-

sional consequences that the evidence will show demonstrate that these local restrictions constitute an unconstitutional burden on interstate commerce and they, therefore, are invalid.

Thank you, your Honor.

[15] THE COURT: Thank you, Mr. Christopher.

Mr. Sieg.

MR. SIEG: Your Honor, if you please, I would prefer to delay any legal argument until the evidence is in. I am not at all sure at this point what additional evidence is either pertinent or necessary.

As I view the matter at this point in time, the basic question is the question of law, and there are sufficient facts now before the court to make that determination.

But I must take some exception to counsel's statement and contention that the court must view this ordinance as if it were applicable to or would be made applicable to airports throughout the country. I am certain that the court is well aware at this point in time that Lockheed Airport is a special situation. It is a private airport. It is within the City of Burbank substantially. It should be treated in terms of the airport as it exists unrelated to any other airports.

I will in time direct the court's attention more specifically to the Airport and Airways Act of 1970, which has been frequently cited, which provides for grants, among other things, for airport improvement extensions, lighting, and so forth. And that Act allows such grants only to airports operated by public agencies. This Lockheed Airport, as it exists in its present ownership, is not and [16] cannot be part of the National Airport System provided for under that Act.

I won't belabor that point now. But I would bring to the court's attention something that has bothered me. The court will note, as has already been indicated, we have cut our witnesses to two. We originally prepared our case on the basis of the pleadings. And, of course, maybe belatedly, with true realization of what was taking place we found that the original due process contention made by the original plaintiffs has been eliminated as an issue.

Now, as we understand this—and we assume this must be true—the court has to assume on the basis of the present record and the joint pretrial statement that the ordinance enacted by the Council of the City of Burbank is a valid, subsisting ordinance within the police power of the city; is not unreasonable nor is it arbitrary, and it was enacted and based upon facts which were more than sufficient to support the enactment insofar as a police power ordinance.

Now, if that contention—I am assuming this must be so, since the contention has been withdrawn. Now this raises another problem, at least as far as the City of Burbank is concerned. Why did the plaintiffs withdraw the contention? I think this should be the subject of some inquiry.

[17] Is it the intent of the plaintiffs in this matter to use this contention in another action, a federal action or a state action? Was it withdrawn because of one of the issues raised which was abstention, since the California Constitution also provides that property shall not be taken without due process?

I don't know. But I do feel that before we embark on the evidence this issue should be made crystal clear so no one will be misled in terms of proof.

Thank you.

THE COURT: All right.

Does anybody want to respond to that, any of the plaintiffs, on this issue of due process and withdrawal of the issues?

MR. CHRISTOPHER: Your Honor, I would respond by saying that the issues as stated by your Honor are the ones that we intend to raise here. The issue of due process is not being pressed at this time upon due deliberation and consideration. It is one of those examples of the pretrial process narrowing the issues and bringing a case to a more manageable focus.

THE COURT: Very well. Now does anyone else have any comments or want to make any statements by way of an opening statement?

All right. The plaintiffs' first witness.

[18] **MR. PACKARD:** Your Honor, before we get the first witness I think we want to read in admitted facts. Mr. Christopher, I think, will do that.

THE COURT: All right. You mean as set forth in the pretrial order?

MR. PACKARD: Yes. We would like to reach some understanding with regard to that.

THE COURT: All right.

MR. CHRISTOPHER: Your Honor, if I may correct something I said before we get too far away from it, your Honor referred to the Hempstead case as being an altitude case. There is a nuance of difference there. The Hempstead case was a noise level case—

THE COURT: Yes.

MR. CHRISTOPHER: —which really translates itself very quickly into an altitude case. So I didn't want to get too far from that without correcting myself.

THE COURT: It's a safety measure case. Yes.

MR. CHRISTOPHER: Yes.



Your Honor, in the pretrial conference order there are 31 paragraphs of facts which are admitted. I believe we need to take them in three separate pieces in order to be faithful to Mr. Sieg's possibility of objection.

So I would first offer paragraphs 1 through 13 of the admitted facts in the pretrial order. I believe I [19] am correct in saying that Mr. Sieg has not reserved any objection with respect to those paragraphs 1 through 13.

MR. SIEG: That's true.

THE COURT: All right. Paragraphs 1 through 13 are admitted in evidence as being admissions of stipulated facts by the parties.

MR. CHRISTOPHER: Thank you, your Honor.

THE COURT: 14 to 27, I believe he objects to on materiality.

MR. CHRISTOPHER: Paragraphs 14 through 27 are objected to as to materiality.

THE COURT: Yes.

MR. CHRISTOPHER: They represent, your Honor, various federal regulations and various actions of the Federal Aviation Agency with respect to this matter.

Would you prefer that I take them up one paragraph at a time?

THE COURT: Well, I suppose it will be necessary at least to start out that way in order to allow them to make their objections.

Is your objection the same to each one, Mr. Sieg?

MR. SIEG: Yes, your Honor.

THE COURT: On the theory that, what, now? That CAB controls carriers and it isn't involved here?

[20] MR. SIEG: Yes. As to the issues that are before the court our objection is that these additional paragraphs of admitted facts are irrelevant and immaterial.

THE COURT: You say they are irrelevant and immaterial. Why?

MR. SIEG: For the reason that what is before the court is a question of law applicable to a private airport, an ordinance that is applicable only to hours of 11:00 to 7:00 a.m. in the morning affecting no interstate carriers. The only intrastate carrier affected is PSA. The others are corporate jet flights. Those are basically the reasons why we feel that these paragraphs are immaterial.

THE COURT: All right, Mr. Christopher, do you want to respond?

MR. CHRISTOPHER: Yes, your Honor. I would move the admission of paragraphs 14 through 27 on the ground that each of them is relevant to each of the three issues which is before the court in this case. These paragraphs show the scope of federal regulation which, of course, is the crux of the question of federal pre-emption.

They show the basis on which each of the carriers which serves Hollywood-Burbank both interstate and the intrastate carriers are licensed to do so and the regulations under which they do so.

[21] These paragraphs show the restrictions under which the planes land and under which they take off. They show the operation of federal tower at Hollywood-Burbank Airport.

Within these paragraphs, your Honor—and I would be glad to discuss them one by one if necessary—but within these paragraphs is the basic federal regula-

tion of air commerce both interstate and intrastate which is conducted at Hollywood-Burbank Airport relevant, therefore, in my view, to each of the three issues.

THE COURT: Well, do I recall correctly that PSA has a certificate?

MR. CHRISTOPHER: Yes, your Honor. PSA has a certificate of public convenience and necessity.

THE COURT: From the California Public Utilities Commission?

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: But not from the Civil Aeronautics Board?

MR. CHRISTOPHER: That's correct, your Honor; not from the Civil Aeronautics Board. That's stated in paragraph No. 17.

THE COURT: Yes.

MR. CHRISTOPHER: As far as its operations, PSA operates under federal jurisdiction and guidance. You [22] will notice in paragraph 17—

THE COURT: You mean that FAA controls the towers and the flight of the planes, is that what you mean?

MR. CHRISTOPHER: Yes, your Honor. And PSA is required to have a commercial operating certificate from the FAA as set forth in paragraph 17. It is required to operate under operations specifications set forth by the FAA. Of course, its planes fly under the control of the Hollywood-Burbank tower and the Los Angeles center.

THE COURT: Well, I am going to admit Exhibits 14 to 27. We will discuss further, of course—there will be further discussion about the pertinence. But it seems to me that at least they have arguable pertinence.

Now, then, what about 28 to 31?

MR. CHRISTOPHER: Your Honor, I move the admission of paragraphs 28 through 31 of the pretrial conference order. If I understand correctly, Mr. Sieg has no objection to the admission of these.

THE COURT: All right. That being the case, 28 through 31, inclusive, are ordered in evidence as admissions and stipulated facts.

MR. CHRISTOPHER: Now, your Honor, at the time of the brief hearing on the motion for preliminary injunction testimony was taken of a Mr. Wescott of PSA. That appears [23] at the reporter's transcript for Wednesday, May 27, 1970, at pages 10 through 40.

Mr. Sieg, you will find that at the front of that document, the volume which I have given you there.

Your Honor, I would move the admission, acceptance into this record of the testimony of Mr. Wescott.

THE COURT: I think we better read it in. I don't like to have depositions just in that way. I think it should be read in.

MR. PACKARD: Do you want to read the questions? I will take the stand and read the answers.

THE COURT: All right.

MR. PACKARD: Do you want to handle it that way, your Honor?

THE COURT: Yes. I don't care who reads the questions and the answers. But I want the deposition read into the record so the record will be complete, then, without having to refer to a lot of other documents.

MR. PACKARD: I think the record should show that Mr. Floyd E. Wescott was duly sworn, called on behalf of the plaintiff Pacific Southwest Airlines, and

was examined by Mr. McInnis. Mr. Christopher will be Mr. McInnis and I will be Mr. Wescott here.

THE COURT: On July 27, 1970. And it was as a part of the—

[24] **MR. PACKARD:** May the 27th.

THE COURT: What?

MR. PACKARD: May the 27th, 1970.

THE COURT: Oh, Monday. I see. May 27th.

MR. PACKARD: Wednesday, May the 27th, 1970.

THE COURT: On May 27, 1970, in connection with a part of the hearing on preliminary injunction; is that correct?

MR. PACKARD: Yes, your Honor.

(The direct testimony of Floyd E. Wescott was read as follows, the questions being read by Mr. Christopher and the answers by Mr. Packard:)

"Q What is your present position or occupation, Mr. Wescott?

"A Vice President Operations, Pacific Southwest Airlines.

"Q How long have you held such position with that Airline?

"A Vice President position about six years. I have been completely in charge of operations for about 12 years.

"Q State briefly what are operations as they are classified in that Airline.

"A At P.S.A. we classify the operations to be responsible for the scheduling of aircraft, [25] the maintenance of aircraft, the crewing of the flight schedule and the efficient and quick movement of all of our fleet.

"Q Are you familiar generally speaking with the type of aircraft operated by P.S.A. and its

schedules, including Burbank-Hollywood — Hollywood-Burbank Airport?

"A Yes, I am.

"Q Have you today examined Exhibit A to the Complaint in this matter as on file?

"A Yes, sir.

"MR. McINNIS: May I approach the witness, your Honor?

"THE COURT: Surely.

"BY MR. McINNIS:

"Q Looking at Exhibit A to the Complaint, Mr. Wescott, you examined that with me, did you, this noon?

"A Yes, I did.

"Q You have seen this on other occasions in your activities as Operations Officer?

"A Yes.

"Q Is it correct, as illustrated on Exhibit A, that Lockheed Airport is bounded on [26] several sides by the County of Los Angeles and City of Los Angeles?

"A Yes, sir.

"Q And is it correct that in that exhibit the runways are shown, as depicted in the marked-off square of the airfield?

"A Yes, sir.

"Q Is it further correct that the City of Burbank lies on roughly two sides partially of the airport, as visualized in that exhibit?

"A Yes, sir.

"Q Are you acquainted with the runways at Hollywood-Burbank?

"A Yes, sir.

"Q And is there a runway known as Runway 25?

"A Yes, sir.

"Q Would you be so kind as to point to the direction that runway runs so the Court, if he desires, will have it, or tell him so he can follow it on his map?

"A Runway 25 runs on a magnetic—

"Q Would you hold it up so the Court can see it, as you illustrate with your finger?

[27] "A (Witness complies.) A compass heading from east to west at a 250-degree heading, which is just a little bit south of straight west.

"Q Assuming an aircraft is to use Runway 25, would it at any time be in the take-off and the departure over any portion of the City of Burbank?

"A No, sir, it would immediately be over the North Hollywood district, which is the City of Los Angeles.

"Q And would that on the map apparently be near the words 'San Fernando Valley'—

"A Yes.

"Q —and below that 'North Hollywood'?

"A Yes, sir, it would.

"Q What is the normal flight pattern set by the FAA to go out on this departure on Runway 25 going south?

"A An airplane with a southern destination, such as San Diego, would take off on Runway 25 and after he was airborne he would take a gradual left turn, which would take him south. Never would he go over the City of [28] Burbank.

"Q Is there a runway known as 33?

"A Yes, sir.

"Q Would you indicate or state as best you can for the record, and point out so that the Court may follow if he desires, Runway 33?

"A Runway 33 goes in a northwesterly direction, which also would go up and out over the City of Los Angeles.

"Q Would a departure on Runway 33 in any way go over any part of the City of Burbank, regardless of whether it is residential or commercial property?

"A No, sir.

"Q Do you know whether or not Runways 25 and 33 may be used in departures for your aircraft departing at 11:30 on Sunday night?

"A Yes, sir, they would be suitable for our use.

"Q And as far as that departure at 11:30 is concerned, where does it originate?

"A That flight originates in Oakland, California, and goes to San Jose and [29] makes one stop, and then to Burbank and then on to San Diego and termination.

"Q Have you made a study to determine the passenger load that is carried on that aircraft into San Diego?

"A Yes, sir, I have.

"Q Would you advise us as to your findings?

"A We find that in the past eight or nine weeks this particular flight has averaged about 125 passengers out of Burbank into San Diego. 80 to 85 of these passengers have boarded in Burbank for destination in San Diego.

"Q Are you familiar with the fact whether or not these are comprised substantially of Military personnel returning to San Diego?

"A Yes, sir, we have established that fact. At one time a couple of years ago we planned to discontinue this flight and we had quite a bit of comment from the Military in San Diego, in addition to parents of young men that were in the Military, who lived in the Burbank-Glendale area.

"Q Does Pacific Southwest Airlines [30] contemplate any other flight than the continuation of its 11:30 flight at this time?

"A No, sir.

"Q Are you familiar with the scheduling of aircraft to know how difficult it is to cancel that flight out in the day's operations?

"A Yes, sir.

"Q Would you advise the Court on the procedures that it would take and the detriment to the company that would arise by reason of having to cancel this on short notice?

"A If we would have to cancel this particular flight we would have to, No. 1, take that flight into the Los Angeles Airport, because once we got it into Burbank, of course, we couldn't depart.

"We need the airplane in San Diego on this particular night to perform necessary maintenance. If we landed the plane in Los Angeles we would have to secure bus transportation to take upwards of 150 people, who would have come out of Oakland and San Jose, over to Burbank.

"We would have to delay the people that were going on to San Diego in Los Angeles until [31] such time as we could pick up the 11:30 board-

ing passengers at Burbank and bring them to Los Angeles.

"Q As far as the aircraft itself is concerned, and the function of maintenance in accordance with FAA Regulations, does it come to San Diego for that purpose on Sunday night?

"A Yes, sir, that airplane overnights in Oakland on Saturday night and this particular aircraft originates in Oakland at 8:00 o'clock Sunday morning and runs through a sequence of nine or ten trips and then is scheduled for San Diego, due to necessary maintenance that can only be performed in San Diego.

"Q In the operations of an airline, is it the custom and practice to rotate aircraft so that they complete a certain day and arrive at the maintenance shop so they can be worked upon during night hours or early morning?

"A That is correct.

"Q Is this being done as far as this flight is concerned out of Hollywood-Burbank?

"A Yes, sir.

"Q What is the number of that flight, [32] if you know?

"A Flight 502.

"Q What type of aircraft is it?

"A It is a Boeing 727-200.

"Q Does it have three jet engines?

"A Yes, sir.

"Q Are you familiar with the operation of a jet aircraft?

"A Yes, sir.

"Q Do you know whether or not once the engines are started they have to be revved up, as propeller aircraft does?

"A No, sir.

"Q By that answer you mean they do not?

"A They do not.

"Q Assuming you are using Runway 25 or 33, in taxiing out that runway would the engines have to be revved up in a jet?

"A No, sir, very little power to move the airplane.

"Q Assuming the airplane is taking off on Runway 25 or 33, would it consume the entire runway?

"A Not necessarily, no, sir. Probably [33] no more than 50 per cent.

"Q Do you know the rate of speed at which the 727-200 jet aircraft takes off the ground?

"A It would leave the ground in the vicinity of 125 to 150 miles an hour.

"Q Do you know the rate of climb?

"A During the immediate take-off, after about one minute the airplane would be approximately fifteen to eighteen hundred feet altitude.

"Q And looking at Exhibit A to the Complaint and visualizing Runways 33 or 25 can you state in seconds how long that airplane would be on the ground on Lockheed Airport before it went over the City of Los Angeles or San Fernando Valley?

"A I would have to have some power charts to get that exactly, but I could—

"Q Give us an approximation.

"A —give a fair guess. I would say the airplane would be off the ground in about 15 or 20

seconds and within a minute it would be well out beyond the boundary of the City of Burbank.

[34] "Q When you say 'the boundary of the City of Burbank,' you mean the boundary on what would be the east, is it, side of the airfield?

"A If it went off on Runway 25 it would be on the westbound side of Burbank.

"Q On the west. We have established, have we not, that the minute the aircraft starts rolling it is going away from the boundary line of Burbank?

"A That is true.

"Q So in sight of some seconds to a minute it would be out over Los Angeles, is that correct?

"A That is correct.

"Q Now, have you further determined whether or not there are reservations having been made for this Sunday night flight for Memorial Day, this Sunday?

"A At today's booking this morning before we left the office that particular flight was about 95 per cent sold out for this Sunday night.

"Q How many travel agents, approximately, have Pacific Southwest Airline tickets, [35] who could sell a ticket on this flight?

"A We have 950 to a thousand travel agents throughout the area who could sell tickets on this particular flight.

"Q Have you made a determination, at my request today, to find out whether or not the reservations for July Fourth weekend, which is five Sundays from now?

"A: We do have reservations booked for this particular flight up into July, yes, sir.

"Q: Is it correct that Pacific Southwest Airlines has been running this flight for some period of time prior to this point?

"A: We have run this particular flight for almost two years. We have had flights departing Burbank after 11:00 p.m. for about the last six years.

"Q: Assuming this flight were to be cancelled, would there be losses to the company in revenues by reason of the inability to take these people through Burbank to San Diego?

"A: Yes, there would be, and there would be additional expenses involved in transporting the people from Burbank to Los [36] Angeles and Los Angeles to Burbank, plus a lot of ill will which would be created among the traveling public.

"Q: Do you have an opinion, by way of an approximation, of the loss in dollars per flight if such a procedure were to be done at this time?

"A: It is very difficult to put an exact dollar price on it. In terms of revenue itself, that is a simple matter of arithmetic, which would probably run a thousand to \$1500.00. But the fact that we weren't able to get our airplane into San Diego to perform some maintenance, if we had to hold it over until the following morning we would have to ferry the airplane to San Diego, because that is where it originates a flight the next day. We would probably have to bring some maintenance people to Burbank to perform some maintenance.

"I would suppose we could say we might get up as high as \$5,000.00, considering all the unknowns.

"Q Assuming that this flight were to be cancelled as of today, so it did not fly this Sunday, would that require an adjustment or [37] cancellation of other flights at other areas to the company's monetary detriment?

"A It would, because we would have to rearrange a whole sequence of flights. This particular aircraft operates eight or nine trips on this particular day, so if we were to back everything up 45 minutes, in order to get out of Burbank two minutes before 11:00, now we are talking about probably inconveniencing—and there would be no way to cover them on this particular Sunday because all flights are pretty solid. But we could get into 1500 to 2,000 people.

"Q Is it true that certain days of the weekend are heavier traveled than other days?

"A Yes, sir, our experience has been that Fridays and Sundays are always heavy traffic days. This particular holiday a lot of companies and firms are taking the Friday off, so heavy traffic this particular weekend is on Thursday, but the returning traffic, everybody has to be back to work on Monday, so the returning traffic is on Sunday.

"Q Mr. Wescott, are you familiar [38] with propellered-type driven aircraft?

"A Yes, sir.

"Q Do you know whether or not engines of that type have to be revved up before they are permitted to take off?

"A Yes, sir.

"Q Is that noisy?

"A Yes, sir.

"Q Do you know whether or not the ordinance is limited only to jet aircraft, as you are informed of its contents at this time?

"A To the best of my knowledge the ordinance only pertains to jet aircraft, jet driven aircraft.

"THE COURT: That is already stipulated to, isn't it?

"MR. SIEG: Yes, sir.

"MR. McINNIS: I don't know whether it is stipulated in this or not.

"THE COURT: It does refer only to jet aircraft. There is no question about that.

"MR. McINNIS: I don't know whether there is a stipulation in the record or not.

"As your Honor knows, there has been one [39] exemption—if that is the correct word—already granted, and that is to allow a departure at 6:30 in the morning against the 7:00 o'clock ordinance.

"THE COURT: I think there is more than one exemption, as I recall.

"MR. McINNIS: I'm not too aware—

"THE COURT: Some of them are classified as emergencies—I think both of them are, aren't they. Anyway, we will get to that. There are some exemptions that have already been granted.

"MR. McINNIS: Yes. Does your Honor care to have that in the record?

"THE COURT: It doesn't make any difference. It is in the memoranda that has been filed.

"MR. McINNIS: I see.

"THE COURT: You can put it in the record, though, if you want.

"MR. McINNIS: No, I don't care to do that, if it is in there. I just haven't read it too thoroughly.

"THE COURT: I know, you haven't had a chance to familiarize yourself thoroughly with [40] it, I guess."

MR. CHRISTOPHER: Now the examination resumes by Mr. McInnis.

"Q Does Pacific Southwest Airlines own any propeller drive aircraft?

"A No, sir.

"Q It has no aircraft to replace this 11:30 by way of a propeller driven aircraft and not be in violation of the ordinance?

"A No, Sir.

"Q It is a pure jet fleet?

"A Yes, sir.

"Q Have you been authorized by management of the company, including the President, that you could make a statement to the Court here, that if the Court saw fit to do so, rather than a preliminary injunction or continuation of the temporary restraining order being in full force and effect until such time as the matter is heard on the merits, that the company would accept a restraint, temporary restraining order, continuation of this order to permit this flight, or seven flights, or through the Fourth of July?

[41] "A Yes, sir.

"THE COURT: I am not quite clear as to just what you said.

"You are not objecting to a restraining order that would do what?

"MR. McINNIS: That would permit these flights to continue.

"THE COURT: Through the Fourth of July weekend?

"MR. McINNIS: Through the Fourth of July weekend.

"Q And that you would not request—

"MR. McINNIS: What I am trying to say is the company is not requesting any further restraint than to get out of the position of its reservations of these two big weekends, which your Honor takes judicial notice, I guess, are probably the biggest in the year, and in the midst of the airlines' peak traffic.

"THE COURT: What would you do after the Fourth of July weekend?

"MR. McINNIS: We by then would adjust our schedule, take our beating and await a ruling of this Court.

"THE COURT: I see."

[42] MR. CHRISTOPHER: Now, the questioning resumes by Mr. McInnis.

"Q Is what I said substantially management's position, which you have been instructed to advise the Court?

"A Yes, sir, we would do that.

"MR. McINNIS: Your Honor, I have no further questions of the witness.

"I assume you take notice of all documents heretofore filed, including the Complaint and the attachments thereto. And as to the validity or invalidity of the ordinance, I assume that is a matter to discuss with you without a witness."

"THE COURT: Yes.

"MR. McINNIS: Thank you."

THE COURT: All right. Cross-examine.

[43] MR. CHRISTOPHER: Interrupting myself now, Mr. Sieg, would you like to have the cross examination read into the record?

MR. SIEG: Yes, please.

May I proceed, your Honor?

THE COURT: Yes.

(Whereupon, the cross examination of the testimony of Witness Wescott was read as follows:)

"BY MR. SIEG:

"Q Mr. Wescott, you filed an affidavit in these proceedings, did you not?

"A Yes, sir.

"Q And you are presently familiar with its contents?

"A Yes, sir.

"Q I direct your attention—and if necessary I will give you a copy—to the latter part of the affidavit, page 3, lines 1 to 5. It is stated there:

"At one time in 1967, PACIFIC SOUTHWEST AIRLINES published a schedule which did not include a Sunday night departure from Hollywood-Burbank Airport at 11:00 P.M. However, shortly thereafter, this late evening flight [44] was reinstated due to the volume of complaints and inquiries from the traveling public."

"Did you follow me, sir?

"A Yes, sir.

"Q Now, at that particular time, in 1967, and I assume prior to that time, you did have a 11:30 flight?

"A That is correct.

"Q And tell me, if you can, what the reasons were for elimination of this 11:30 flight."

"A Well, at the particular time we were having some equipment problems, shortages and re-ar-

ranging of our schedule we thought we could forego this.

"Q For how long a period did you forego the 11:30 flight?

"A We never did forego it at all. We published the schedule about a month or six weeks before it was to be effective and passengers who used that flight, when they found out about it, they registered a lot of complaints and comments, so we actually never did discontinue it.

"Q You did not discontinue it?

"A No, sir.

[45] "Q Now, when you did reschedule, however, did you change all of your other flights?

"A We had to change a few of them, yes. I can't tell you exactly how many.

"Q Well, can you give me an example of which ones you had to change?

"A I wouldn't be able to do that unless I could have reference to the particular schedule in 1967.

"Q Do you have an earlier flight to Hollywood-Burbank Airport from Oakland, is it?

"A I wouldn't be able to tell that without reference to—we do have earlier flights, yes, from Oakland.

"Q How much earlier?

"A I am sorry, I can't state that from memory.

"MR. McINNIS: May I give the witness a schedule, with your Honor's permission?

"THE COURT: Yes.

"THE WITNESS: Oakland to San Diego on Sundays only, we have a departure at 10:00,

10:15 and 11:45. They do not go through Los Angeles.

"THE COURT: Are those all A.M.?

"THE WITNESS: P.M.

[46] "THE COURT: All P.M. hours?

"THE WITNESS: Yes. We have several during the day.

"THE COURT: You say one at 11:45 P.M., departure from Oakland?

"THE WITNESS: From Oakland, yes, sir.

"THE COURT: That doesn't go to Los Angeles?

"THE WITNESS: Yes, sir.

"THE COURT: It stays there?

"THE WITNESS: No, it comes on to San Diego but it goes through Los Angeles.

"THE COURT: Los Angeles and not Burbank?

"THE WITNESS: That is correct.

"BY MR. SEIG:

"Q This 11:30 flight from Hollywood-Burbank, at what hour does it leave Oakland?

"A That leaves Oakland at 10:00 P.M.

"Q 10:00 P.M.?

"A That is correct.

"Q So you have two flights leaving Oakland at the same time on Sunday night, one going to Hollywood-Burbank Airport and the other going to L. A. International Airport?

"A No, one leaves at 10:00 o'clock [47] through Burbank. That is the last flight through Burbank. A 10:15 departure through Los Angeles.

"Q What I am pointing out, and maybe I misunderstood you, you gave me three times, 10:00 P.M., 10:15 P.M. and 11:45 P.M., and I thought you stated that all of those flights went through L. A. International to San Diego.

"A If I said that I was in error. The 10:00 P.M. departure goes through Burbank.

"Q There is just one 10:00 P.M. departure of your airline from Oakland for San Diego?

"A No, sir.

"Q I am sorry.

"THE COURT: Do you want them all for the 24 hours?

"MR. SIEG: No, sir, I am only interested in the night flights.

"THE WITNESS: To answer your question, maybe I can clear it up, of the three flights, one goes through Burbank and two of them go through Los Angeles.

"THE COURT: There is only one night flight that goes through Burbank?

"THE WITNESS: That is correct.

[48] "THE COURT: All right.

"BY MR. SIEG:

"Q It leaves Oakland at 10:00 P.M.?

"A That is correct.

"Q And departs Hollywood-Burbank at 11:30 P.M.?

"A That is correct.

"Q And when does that arrive in San Diego?

"A 11:55 P.M.

"Q So as far as departures from Oakland for San Diego, you have later flights departing Oakland, 10:15 and 11:45 P.M.?

"A That is correct.

"Q Those two go through L. A. Airport instead of Burbank?

"A Yes, sir.

"Q Now, if you would, Mr. Wescott, would you refer again to Exhibit A of the Complaint?

"(Witness complies.)

"Q And the map, and may I ask you this question: The portion delineated in black, I believe, on the original in a color.

"THE COURT: Blue. Is that Burbank? [49] There are two boundaries, one in blue and one in red.

"MR. SIEG: Yes.

"THE COURT: All right. Can you tell whether the blue outlines Burbank or not?

"THE WITNESS: That is right. North Hollywood on the west and Burbank is on the right.

"BY MR. SIEG:

"Q May I ask you this question: All of the areas delineated in red or blue are within the City of Burbank, are they not?

"A To the best of my knowledge, yes, sir.

"Q Now, you have referred in your direct testimony to Runways 25 and 33.

"A Yes, sir.

"Q May I ask you, is there a Runway No. 15?

"A Yes, sir.

"Q And will you in some manner indicate to the court that particular runway?

"A Yes. Runway 15 is right here (indicating). It takes off in a southeasterly direction.

"THE COURT: Is it on this map?"

[50] "THE WITNESS: Yes."

"THE COURT: It is the narrow runway?"

"THE WITNESS: It is this one right here, sir (indicating).

"It is right here (indicating), what we refer to as the north-south runway (indicating).

"THE COURT: That is marked 25 on my map."

"THE WITNESS: Runway 15 (indicating).

"THE COURT: It says '25' here. There is the

"25' (indicating). That is the one you talked about before.

"You described Runways 25 and 33."

"THE WITNESS: That is right."

"THE COURT: Is there a 15?"

"THE WITNESS: Runway 7 and Runway 25."

"THE COURT: Yes, but he asked about a 15."

"Didn't you?"

"MR. SIEG: Yes, your Honor."

"THE COURT: Is there a Runway 15?"

"THE WITNESS: Runway 15, yes, sir (indicating).

"THE COURT: Where is it?"

"THE WITNESS: On the north-south runway, sir (indicating).

[51] "THE COURT: It isn't marked here?"

"THE WITNESS: 150 degrees—"

"THE COURT: Will you mark it on this Exhibit A?"

"THE WITNESS: It is 150 degrees—the opposite of Runway 33."

"BY MR. SIEG:

"Q Will you mark it on the Judge's copy?

"THE COURT: Put '15' there. It is 33 and 15, is that what you are saying?

"THE WITNESS: Yes, sir, right here (indicating).

"THE COURT: It is the same physical runway?

"THE WITNESS: 15 in one direction and 33 in another.

"THE COURT: Fine. All right. I understand. We will mark it.

"It isn't marked on this exhibit.

"MR. McINNIS: Does your Honor have on your exhibit marked 25 and 33 runways?

"THE COURT: Yes, 25 and 33 are marked.

"He says 33 is 15 in taking off in the opposite direction.

[52] "MR. McINNIS: That is correct.

"THE COURT: All right.

"BY MR. SIEG:

"Q Just to complete the runways at the airport, is there also a No. 7 Runway?

"A Yes.

"Q Again, would you—

"THE COURT: It shows on Exhibit A. Runway 7 is marked.

"THE WITNESS: East and west.

"THE COURT: It is east and west and the opposite direction to 25, I gather, from the map.

"Is that right?

"THE WITNESS: That is correct, sir.

"THE COURT: All right.

"BY MR. SIEG: Now, No. 25 as such is for takeoffs from

"Q Now, No. 25 as such is for takeoffs from east to west, is that correct?

"A That is correct.

"Q And in the reverse, No. 7 is takeoff—for takeoffs from west to east?

"A That is correct.

"Q Just to re-emphasize, 33 is takeoff from south to north?

[53] "A That is correct.

"Q And 15 is for takeoff from north to south?

"A Yes, sir.

"Q Where are your offices, Mr. Wescott?

"A My own offices?

"A Yes.

"A San Diego, California.

"Q Do you have an office at the airport,—

"A Yes.

"Q Hollywood-Burbank Airport?

"THE COURT: Do you mean P.S.A. or personally?

"THE WITNESS: I do not.

"MR. SIEG: Yes.

"THE WITNESS: P.S.A. does, yes, sir.

"BY MR. SIEG:

"Q Are you in any wise familiar with the airport's operations?

"A Yes, sir.

"Q All right. Are you familiar with which runway is used with the greatest frequency?

"A Runway 15 is what the airport terms [54] a preferential runway.

"Q And this is a runway P.S.A. uses with the greatest frequency?

"A We try to avoid it in connection with the noise abatement program of Burbank whenever we can, especially in the hours before 7:00 A.M. and 11:00 P.M.

"Q May I ask you, were you in this city on Mother's Day?

"A No, sir.

"Q And you do not know of your own knowledge which way the 11:30 P.S.A. flight, or which runway it used for taking off?

"A No, sir, I am sorry, I don't.

"Q And the succeeding Sundays up to the present time, do you know which runway it used in taking off?

"A No, sir, I don't.

"Q So, in other words, you have no knowledge as to which runway is used most frequently for this P.S.A. 11:30 flight?

"A I would have to refer to records; I don't know that.

"Q As to this 11:30 P.M. Sunday Flight, Mr. Wescott, is it possible under any [55] arrangements that you may have or may be able to make to have that flight likewise use the L.A. International Airport?

"A We could, but we don't need a flight at 11:30. We already have one from Los Angeles and this flight services the people in the San Fernando Valley.

"Q In other words, there is enough passenger capacity on your 11:30 flight or you could make such an arrangement to accommodate those passengers?

"A Not now anymore.

"A What do you mean, 'not now anymore'?

"A We don't have any space.

"Q You mean because of the reservations—

"A Yes, sir.

"A —for the Memorial Day weekend?

"A That is true.

"A What about the Fourth of July weekend?

"A Well, we are not completely sold out, but we are roughly about 50 percent. The people want the flight into Burbank. They don't want to go to Los Angeles, they want to go to [56] Burbank and they want to depart from Burbank because that is where they live.

"Q How do you know this to be true, Mr. Wescott?

"A Well, during this particular period when we did try to discontinue this flight we got a lot of comments from people in the San Fernando Valley and in the area of the Lockheed Air Terminal, that they would like to have that flight reinstated.

"Q Do you personally receive these comments, these complaints?

"A Not all of them, but they come to me through our PR department, through our sales department and in samplings of the public opinion. We had a few letters that came in from that airplane, passengers on the airplane, that would like to have the flight continued.

"Q For example, could you not, without any great inconvenience to the public or to your company, schedule the departure of the flight at Oakland so that it would arrive here prior to 11:00 P.M. and depart prior to 11:00 P.M.?

"A Not under our present schedule because that airplane that makes that departure [57] at 10:00 o'clock in Oakland doesn't arrive there until 9:35.

"Q Where does it come from?

"A San Diego.

"Q And you have no other aircraft that can be utilized for this purpose?

"A No, sir, Sunday nights we operate every piece of equipment that we have to maximum.

"THE COURT: When does it get in Oakland from San Diego?

"THE WITNESS: It arrives at Oakland at 9:35, I believe. 9:30 or 9:35, I don't have the exact time. We like to have a minimum of 30 to 40 minutes to turn the airplanes around, service them, clean them up and refuel them, and what not.

"BY MR. SIEG:

"Q In view of the offer of counsel as to the extent of the restraint that he could agree to, what will you do to reschedule these flights after July 4th?

"A Well, this becomes a sort of a routine job, you might say, when you are making a four-week schedule.

"What we are concerned with now is that [58] we have people already booked for this flight—

"THE COURT: But he wants to know how will you reschedule it now after the Fourth—I mean, assuming that you had until the week end of the 5th of July to do it, he wants to know how would you reschedule it? What would you actually do?

"THE WITNESS: We would have to rearrange probably four or five different airplanes to arrive at these different departure times.

"BY MR. SIEG:

"Q But you would have no problem in doing this?

"A No problem—no more problem than we have whenever we make a whole new reschedule. It is a big problem, but that is part of our business.

"THE COURT: How many planes would you reschedule, now? Suppose you were going to do this, it was a fait accompli, and you were going to do this, how many planes would you have to reschedule?

"THE WITNESS: I can't answer that, because it doesn't involve maybe just that one—if we were to just take the one particular [59] airplane we would have to start out about an hour earlier in the morning, which would throw of nine or ten departures during the day over what they are right now.

"THE COURT: Let me ask you this: Where does this plane come from, the plane that leaves San Diego that goes to Oakland and gets to Oakland at 9:35?

"THE WITNESS: It comes from San Diego.

"THE COURT: Now, what is its prior point of departure?

"THE WITNESS: I would have to refer to the scheduling. I think it departs from Oakland again.

"THE COURT: It has been flying all day back and forth?

"THE WITNESS: That is right.

"THE COURT: Between Oakland and—

"THE WITNESS: Not necessarily. Somewhere in our system.

"THE COURT: I see.

"THE WITNESS: That particular airplane that would wind up on this sequence originated in Oakland at 8:15, I believe, Sunday morning, and operated nine or ten trips all day long and then its final departure for the day, leaving Oakland [60] at 10:00 P.M. and into San Diego at 11:55.

"MR. SIEG: I have no further questions.

"THE COURT: All right. Anything further?

"MR. McINNIS: No. Does the court have any further questions?

"THE COURT: Thank you, Mr. Wescott, you may step down.

"(Witness excused.)"

THE COURT: Does that conclude the testimony of Mr. Wescott?

MR. CHRISTOPHER: It does, and I move its incorporation in the present trial record, if that is necessary.

THE COURT: It is in the record now.

MR. CHRISTOPHER: Thank you, your Honor.

THE COURT: Yes.

MR. CHRISTOPHER: We would like, with your permission, your Honor, at this time to offer certain documents. They are documents which are foundational and we believe will expedite the testimony of certain witnesses. We prepared three sets of these documents, your Honor. One set is in the hands of counsel for the defendants and we have a set here to give to the clerk and the plaintiffs have a set for their use.

[61] As the plaintiff and intervening plaintiff's No. 1 for identification, your Honor, we have marked a street map of the San Fernando Valley area. It is an auto club map and has the notation at the bottom "4-70."

This is a map which depicts the Hollywood-Burbank Airport and the surrounding San Fernando Valley area, your Honor.

THE COURT: Any objection?

MR. SIEG: No objection.

THE COURT: Exhibit 1 is ordered in evidence.

(Plaintiffs' Exhibit 1 for identification was received in evidence.)

MR. CHRISTOPHER: Your Honor, we have marked for identification as Exhibit No. 2 a scale drawing which bears the legend "Hollywood-Burbank Airport and Environs", and which shows the runways and the various buildings at Hollywood-Burbank Airport.

This map, this scale drawing, bears the legend "September 1970", so it is right up to date.

I offer that in evidence.

THE COURT: What was the date, again?

MR. CHRISTOPHER: September 1970.

THE COURT: All right.

Any objection?

[62] MR. SIEG: No objection.

THE COURT: Exhibit 2 is ordered in evidence.

(Plaintiffs' Exhibit 2 for identification was received in evidence.)

MR. CHRISTOPHER: As our Exhibit 3, your Honor, we have marked for identification a photograph of the Lockheed Air Terminal as taken on Memorial Day 1930.

Paragraph 6 of the Admitted Facts indicates that the airport was dedicated on that day, Memorial Day 1930, and is a matter of historical interest and shows the conditions at that time.

We have marked this as Exhibit No. 3 and we offer it in evidence, your Honor.

THE COURT: Absent objection, Exhibit 3 is ordered in evidence.

MR. SIEG: No objection.
(Plaintiffs' Exhibit 3 for identification was received in evidence.)

MR. CHRISTOPHER: As our Exhibit No. 4, your Honor, we have marked for identification an order of the Civil Aeronautics Board of the United States of America, bearing Serial No. 745, and the docket number of 507.

This is the order, your Honor, approving the acquisition by Lockheed Aircraft Corporation of what is now [63] Lockheed Air Terminal.

THE COURT: Ordered in evidence, in the absence of objection.

MR. SIEG: Your Honor, this is a new exhibit that I have not previously seen. May I have time to examine it?

THE COURT: Yes.

MR. CHRISTOPHER: Mr. Sieg is correct about that, your Honor. Most of these he reviewed in our office. There will be rare ones, such as this, an official document, which he may not yet have seen.

THE COURT: All right. Why don't you go ahead and at recess the ones he hasn't seen he can look at them. I will withhold ruling on it now and after he has had an opportunity to look at it and examine it we will consider it further.

MR. PACKARD: Could we have it marked for identification, your Honor?

THE COURT: It is marked for identification.

(Plaintiffs' Exhibit 4 was marked for identification.)

MR. CHRISTOPHER: Your Honor, at an appropriate point I would like to call attention to certain paragraphs in these documents. Would you prefer I [64] do it as we go through or would you prefer to wait for a later time?

THE COURT: It doesn't make any difference to me.

MR. CHRISTOPHER: I would like to do it as we go through, your Honor. It is not by way of any argument, but to call the court's attention to certain paragraphs.

THE COURT: All right.

MR. CHRISTOPHER: This is exhibit for identification No. 4.

THE COURT: We had better wait because Mr. Sieg hasn't had an opportunity to examine it.

MR. CHRISTOPHER: All right. We will come back to that one.

THE COURT: Go to the next one.

MR. CHRISTOPHER: Exhibit for identification No. 5 is a license between the FAA and Lockheed Air Terminal, dated April 26, 1951, and which grants the United States certain rights and privileges to install and operate approach lights, instrument landing systems, radar facilities, and other necessary control facilities at the Lockheed Air Terminal.

We offer that in evidence, your Honor.

MR. SIEG: No objection, your Honor.

[65] THE COURT: Exhibit 5 is ordered in evidence.

(Plaintiffs' Exhibit 5 for identification was received in evidence.)

MR. CHRISTOPHER: Exhibit No. 6 for identification, your Honor, is a Supplemental Agreement to the prior exhibit, which bears the date of May 27, 1952; a Supplemental Agreement No. 2 to the prior exhibit, which bears the date of July 24, 1957; a document bearing the date January 4, 1960, which is an amendment of the license which is the prior exhibit; and finally, your Honor, a list of the Government equipment which has been installed at Hollywood-Burbank pursuant to these agreements.

We offer in evidence No. 6, your Honor.

MR. SIEG: No objection.

THE COURT: 6 is ordered in evidence.

(Plaintiffs' Exhibit 6 for identification was received in evidence.)

[66] MR. CHRISTOPHER: Exhibit for identification No. 7, your Honor, are approach and departure charts for use the Hollywood-Burbank Airport.

Identifying them by their names, there is El Monte Seven Departure; Fillmore Three Departure; Saugus Two Departure; Twin Lakes Two Departure; and three approach plates.

MR. SIEG: Your Honor, I would object to this set of exhibits as irrelevant and immaterial. The reception of these in evidence would offer nothing in the way of establishing the plaintiffs' position. Here we are dealing with a flight pattern above the ground, having nothing to do with the activity that is forbidden by the ordinance here in question. I do not believe the record should be encumbered with material of this kind.

THE COURT: What is the purpose, Mr. Christopher?

MR. CHRISTOPHER: Your Honor, the purpose is substantially the same as paragraphs 14 through 27 of the admitted facts. These documents are a strong demonstration for the pervasive federal control of every aspect of operations into and out of Hollywood-Burbank Airport.

Examination, for instance, of the El Monte Seven Departure, which is the top one—at least on my exhibit No. 7 list—indicates how thorough the federal control of [67] the departure is. And these documents are further elucidated in the testimony of witnesses.

THE COURT: Well, I will admit them. I understand it is a problem. And I understand the nature of the objection. And I understand the purpose of your putting them in. As to just how material they are will probably develop.

The nature of the control, as I understand it, though—you are talking about the control by FAA through the tower; that is, the takeoffs and the altitudes, and so forth, and bringing them in, and things of that kind.

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: Now, as to how much that is going to affect your argument as to the ordinance is problematical, in my mind. But I think there is some materiality, so I am going to allow it in.

6 is ordered in evidence. We will get to the argument in more detail later, of course.

MR. CHRISTOPHER: I believe that was 7, your Honor.

THE COURT: 6 there was no objection to.

MR. CHRISTOPHER: That is correct.

THE COURT: All right. I ran out of lead here. All right.

(Plaintiffs' Exhibit 7 for identification was received in evidence.)

[68] MR. CHRISTOPHER: Your Honor Exhibit 8 for identification is the Certificate of Public Convenience and Necessity which has been issued to Air West and which shows its authority to operate at Hollywood-Burbank Airport.

I move its admission.

THE COURT: Ordered in evidence.

MR. SIEG: May I inquire, your Honor? This is No. 8?

THE COURT: 8.

MR. SIEG: The actual certificate, as I see it, unless there has been some change, is issued to Hughes Air Corporation; is that correct?

MR. CHRISTOPHER: Yes. I thank you for that correction, Mr. Sieg. The certificate is to Hughes Air Corporation.

THE COURT: Then it should not be Air West; is that right?

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: It should be to Hughes Air Corporation?

MR. SIEG: No objection.

THE COURT: All right. Now, the same Certificate of Public Convenience, 9, 10, 11, 12, those are all similar documents as applying to different air carriers?

[69] MR. CHRISTOPHER: Yes, your Honor. 12 is the certificate to PSA issued by the PUC.

THE COURT: Yes.

MR. CHRISTOPHER: It has that difference, your Honor.

THE COURT: California Public Utilities Commission?

MR. CHRISTOPHER: Right.

THE COURT: All right.

They are ordered in evidence, 9 through 12.

(Plaintiffs' Exhibits 8 to 12, inclusive, were received in evidence.)

MR. CHRISTOPHER: Exhibit 13 for identification is the Air Carrier Operating Certificate issued by the Federal Aviation Administration to Air West.

I offer that in evidence, your Honor.

THE COURT: Ordered in evidence.

(Plaintiffs' Exhibit 13 for identification was received in evidence.)

THE COURT: We will take our morning recess now, gentlemen, for about ten minutes.

(Recess taken.)

THE COURT: Proceed. We were on 14, I believe.

MR. CHRISTOPHER: Your Honor, 14, 15 and 16 [70] are the Air Carrier Operating Certificates issued to Continental, United and Western.

We offer those in evidence.

THE COURT: Ordered in evidence.

(Plaintiffs' Exhibits 14, 15 and 16 were received in evidence.)

MR. SIEG: No objection.

Do you wish to return to No. 4, your Honor?

THE COURT: Yes, if you are ready, Mr. Sieg.

MR. SIEG: Yes. I have no objection to its admission. I do believe, having now read it, there is a pertinent portion which should be brought to the court's attention.

THE COURT: All right. Well, let's let Mr. Christopher bring the portion he had in mind to our attention, and then you can bring the portion you have in mind. Maybe it will be the same.

4 is ordered in evidence.

(Plaintiffs' Exhibit 4 for identification was received in evidence.)

MR. CHRISTOPHER: Yes, your Honor.

On page 4, your Honor, I would call attention to the next to the last paragraph commencing "Lockheed will cause. . . ." and then the turnover paragraph starting [71] at the bottom of 4 and going over—

THE COURT: May I see it, please?

You said page 4?

MR. CHRISTOPHER: Yes, sir.

MR. PACKARD: Why don't you start at the sentence prior to that?

MR. CHRISTOPHER: All right.

MR. PACKARD: "Lockheed desires . . ."

THE COURT: What is it, now?

MR. CHRISTOPHER: In the middle of the page I call attention, your Honor, to the sentence beginning, "Lockheed desires. . ." and through the bottom of the page and over to the top of page 5.

THE COURT: The paragraph following the quotation right about in the middle of the paragraph, "Lockheed desires to immediately build additional hangar facilities. . . .?"

MR. SIEG: May we go up to the top of the paragraph?

THE COURT: All right.

MR. SIEG: Then I'll be satisfied. "Lockheed plans . . ."

THE COURT: All right. "Lockheed plans to use . . ." All right. Does that go down to the paragraph beginning with "If . . .?"

[72] MR. CHRISTOPHER: Yes, your Honor. That's the portion I wish to invite your attention to.

MR. SIEG: May we continue on with the next paragraph?

THE COURT: All right. Down to the paragraph beginning with "The record shows that . . .?"

MR. SIEG: Yes, your Honor.

THE COURT: This is an application of United Air Lines—wait a minute—for approval of the acquisition by Lockheed of United Air Lines Transport Corporation of the outstanding capital stock of United Air-
port Company of California. Exhibit 4. All right.

MR. CHRISTOPHER: Your Honor, Exhibit 17 for identification is a Commercial Operating Certificate issued by the FAA to PSA.

I offer that in evidence.

THE COURT: 17 is ordered in evidence.

(Plaintiffs' Exhibit 17 for identification was received in evidence.)

MR. CHRISTOPHER: No. 18, your Honor, for identification is the Operations Specifications issued by the Administrator of the FAA to Air West.

THE COURT: Now, we only had the problem—or the change of Air West to Hughes Air Corporation in Exhibit 8, that's the only one that requires a change?

[73] MR. CHRISTOPHER: Yes, your Honor. During the noon hour I will, I think, be able to produce the documents that show the transfer from Hughes to Air West and to fill that minor gap.

THE COURT: All right.

18 is ordered in evidence.

(Plaintiffs' Exhibit 18 for identification was received in evidence.)

MR. CHRISTOPHER: Your Honor, if I may I would like to call attention to certain paragraphs in Exhibit 18.

THE COURT: Very well.

MR. CHRISTOPHER: On the third page, your Honor, which is Part B, page 2, the third page from the front—

THE COURT: Third page from the front?

MR. CHRISTOPHER: Yes, sir. And it is Part B, page 2.

THE COURT: Well, see, I am going beyond the third page. This is Exhibit 18?

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: My third page says Part A, page 3, Operations Specifications.

MR. CHRISTOPHER: I am sorry. It would be the sixth page, your Honor, of yours, I believe.

[74] THE COURT: All right. Yes. Sixth page, Part B, page 2.

MR. CHRISTOPHER: In paragraph 12 I call your attention to the special provision for turbojet aircraft on page 12 requiring them to be—

THE COURT: Paragraph 12?

MR. CHRISTOPHER: Paragraph 12.

THE COURT: Yes.

MR. CHRISTOPHER: Requiring them to be operated in accordance with instrument flight rules.

THE COURT: Yes.

MR. CHRISTOPHER: Now, your Honor, on Part C, page 1, about halfway through the document—

THE COURT: Yes.

MR. CHRISTOPHER: —I call attention to the first sentence of paragraph 22.

THE COURT: "No airport other than the ones listed in Section 32 . . .?"

MR. CHRISTOPHER: Right. Finally, I call attention to Section 32 on page 14 of paragraph C, the reference to Hollywood-Burbank Airport, it being—

THE COURT: Page 14. Yes.

MR. CHRISTOPHER: Paragraph 32, and the reference at the bottom to Burbank Airport as being a regular airport for DC-9 aircraft.

[75] THE COURT: Yes. All right. Well, now, it says, "Type of aircraft." What does this R mean? The R, you say, means regular?

R, regular. Authorized airport. Location. Type of aircraft.

What does the "Type of aircraft"—I don't follow this schedule.

MR. CHRISTOPHER: Your Honor, at the top of the column on the right-hand part of the page you see DC-9 aircraft?

THE COURT: Yes. I see. That's the type. In other words, it is above the printing "Type of aircraft," but not below where the type of aircraft is noted?

MR. CHRISTOPHER: That's correct, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: The R means regular as indicated—

THE COURT: Yes, under paragraph 32.

MR. CHRISTOPHER: Yes, sir.

THE COURT: All right.

MR. CHRISTOPHER: Exhibit 19 for identification is the comparable operations specifications issued to Continental Airlines by the FAA.

THE COURT: 20 and 21 are comparable [76] specifications issued by FAA to United and to Western; is that correct?

MR. CHRISTOPHER: That's correct, your Honor.

THE COURT: You are offering those three?

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: 19, 20, and 21 ordered in evidence.

(Plaintiffs' Exhibits 19, 20 and 21 were received in evidence.)

MR. CHRISTOPHER: Going back to 19, the Continental Operations Specifications, your Honor, on page B, Part 2, which is, I believe, again, the sixth page—

THE COURT: Yes.

MR. CHRISTOPHER: I call your attention to paragraph 12, Special Provisions for Turbojet Aircraft Requiring Them to be Operated in Accordance with Instrument Flight Rules.

THE COURT: All right.

MR. CHRISTOPHER: And on page 16, Part C—

THE COURT: Part C, 16.

MR. CHRISTOPHER: Yes, sir.

THE COURT: Yes.

MR. CHRISTOPHER: Under the listing of California I call attention to Burbank as being one of the [77] listed authorized airports.

Your Honor, in Exhibit 20 the United Air Lines Operations Specifications, I call attention to the last page in that exhibit, which is Part C, page 16, showing Burbank Airport as being an alternate airport.

[78] THE COURT: Very well.

MR. CHRISTOPHER: Your Honor, in Exhibit 21 the comparable reference on the last page to Burbank is an alternate airport for Western Airlines.

Your Honor, Exhibit 22 for identification is the Operations Specifications issued by the FAA to PSA I offer in evidence.

THE COURT: 22 is ordered in evidence.

(The exhibit previously marked Plaintiffs' Exhibit 22 was received in evidence.)

MR. CHRISTOPHER: That one, your Honor, I call attention to the second page of the document you have before you, which is page B-2, and to paragraph 12 on that page, indicating that "Turbojet aircraft must be operated in accordance with the instrument flight rules."

THE COURT: Which paragraph? You said B-2, what paragraph?

MR. CHRISTOPHER: I am sorry. Paragraph 12, your Honor.

THE COURT: Paragraph 12. "be operated within the navigable airspace in accordance with the instrument flight rules."

MR. CHRISTOPHER: That is correct.

THE COURT: All right.

MR. CHRISTOPHER: Your Honor, exhibit for identification, Exhibits 23, 24 and 25 are type certifications [79] issued for the aircraft which are used in the Hollywood-Burbank Airport for the Boeing 727, Boeing 737 and Douglas DC-9. I offer those three exhibits in evidence.

THE COURT: Ordered in evidence.

(The exhibits previously marked Plaintiffs' Exhibits 23, 24 and 25 were received in evidence.)

THE COURT: The PSA, was it 727?

MR. CHRISTOPHER: PSA operates 737 and 727 both.

THE COURT: Both. This 11:30 one, wasn't that 727? Not that it makes too much difference.

MR. CHRISTOPHER: Yes, that is my recollection, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: Exhibit for identification No. 26 is a specimen airworthiness certificate issued by the Administrator of the FAA for a particular DC-9 aircraft that belongs to Air West. That is Aircraft No. N-9338. I move that in evidence, your Honor.

THE COURT: All right. 26 is ordered in evidence.

(The exhibits previously marked Plaintiffs'

Exhibit 26 was received in evidence.)

[80] MR. CHRISTOPHER: Exhibits for identification Nos. 27 and 28 are specimen certificates issued by the FAA for air transport pilots and flight engineers. I offer those in evidence as specimen.

THE COURT: Exhibits 27 and 28 are in evidence.

(The exhibits previously marked Plaintiffs'

Exhibits 27 and 28 were received in evidence.)

MR. CHRISTOPHER: Exhibit No. 29 for identification, your Honor, is the Agreement between Lockheed Air Terminal, Inc., and the FAA for operation of the control tower at Hollywood-Burbank Airport. I offer that in evidence.

THE COURT: Exhibit 29 is ordered in evidence.

(The exhibit previously marked Plaintiffs'

Exhibit 29 was received in evidence.)

MR. CHRISTOPHER: With reference to Exhibit 29, your Honor, I call attention to paragraph 10 on the second page.

THE COURT: Yes. "Control of the control tower by FAA"?

MR. CHRISTOPHER: Yes, sir.

THE COURT: All right.

[81] MR. CHRISTOPHER: Finally, your Honor, in this particular set, Exhibit 30 for identification is the presently existing informal runway use, noise abatement order, issued by the FAA for use at Hollywood-Burbank Airport. The present document is No. 7100.5B, and in that same exhibit, your Honor, are the three preceding FAA orders.

Taken in order, your Honor, there is the first order of December 7, 1967, which has the designation BUR 7100.3.

THE COURT: What is the "BUR" an abbreviation for?

MR. CHRISTOPHER: Burbank.

THE COURT: Burbank. All right.

MR. CHRISTOPHER: The second one of this group, April 23, 1968, bearing designation BUR 7100.5.

THE COURT: Are you talking about portions of Exhibit 30?

MR. CHRISTOPHER: Yes, sir.

THE COURT: It is described here in my list—it would indicate to me there was only one order involved, that being 7100.5B.

MR. CHRISTOPHER: I apologize for that, your Honor. We found the preceding orders and we thought to make the record complete to put in not only the presently [82] effective one, but the preceding ones.

THE COURT: How many preceding ones are there?

MR. CHRISTOPHER: Three.

THE COURT: Three. I will make a note here.

MR. CHRISTOPHER: The second one of the set is April 23, 1968, bearing designation BUR 7100.5.

The third one is dated August 19, 1968, bearing the designation BUR 7100.5A, and finally the current one bearing the date September 4, 1969, and bearing the designation BUR 7100.5B.

We offer those in evidence, your Honor.

THE COURT: Very well. Ordered in evidence as Exhibit 30.

(The exhibit previously marked Plaintiffs' Exhibit 30 was received in evidence.)

MR. CHRISTOPHER: With respect to these documents, your Honor, and taking the current one which is dated 4 September 1969, bearing the designation BUR 7100.5B, calling particular attention to the paragraph 5 and subparagraph C.

THE COURT: Yes.

MR. CHRISTOPHER: That provides—

THE COURT: C, did you say?

MR. CHRISTOPHER: Yes, on the second page.

THE COURT: Yes.

[83] MR. CHRISTOPHER: That provides that Runway 25 is a preferential runway during the hours from 11:00 p.m. to 7:00 a.m.

The arrow in front of that, your Honor, indicates that that is an added paragraph, which was not in the preceding order as the reference to the preceding order would indicate.

THE COURT: That was a noise abatement measure, was it?

MR. CHRISTOPHER: Yes, your Honor. The order as a whole is the FAA—

THE COURT: Yes, that is a part of it.

MR. CHRISTOPHER: Yes, sir.

THE COURT: All right.

MR. CHRISTOPHER: And was expressly ordered, as that paragraph shows, to cover the hours between 11:00 p.m. and 7:00 a.m.

THE COURT: All right.

MR. CHRISTOPHER: Exhibit 31 for identification, your Honor, is a sectional aeronautical chart for the Los Angeles area, dated February 5, 1970.

Your Honor, your notation there may show charts for San Francisco, Las Vegas and Phoenix as well.

THE COURT: My notation just shows Los Angeles.

MR. CHRISTOPHER: Good. We offer this in [84] evidence, your Honor.

THE COURT: Ordered in evidence.

(The exhibit previously marked Plaintiffs' Exhibit 31 was received in evidence.)

MR. CHRISTOPHER: Exhibit for identification No. 32 is the document dated October 1, 1969, bearing the title, "Facility Management" and the pages are—the heading page is 7210.3, and pages 129, 130, 131, 132, 197 and 198. These are offered in evidence, your Honor.

THE COURT: What were those pages, again, please, Mr. Christopher?

MR. CHRISTOPHER: Your Honor, I was just simply listing all the pages of the exhibit.

THE COURT: Oh, I see. You are not citing anything in particular?

MR. CHRISTOPHER: I was going to now, your Honor.

THE COURT: Very well.

MR. CHRISTOPHER: The page to which I would invite your attention is page 129, and in particular there I would call attention to paragraph which is designated 1140 and 1141, headed, "Types of Flow Control and Action" by Affected Centers Respectively.

THE COURT: Very well.

MR. CHRISTOPHER: Exhibit for identification [85] No. 33, your Honor, is the Central Flow Control Order, being Order No. 7230.12, which I offer in evidence.

THE COURT: How is that generally to be distinguished from 32, which is designated just "Flow Control"?

MR. CHRISTOPHER: Your Honor, flow control is accomplished by the regional or local air traffic control centers. Flow control might be instituted by the Los Angeles Center at Palmdale, pursuant to the provisions of Exhibit 32.

Exhibit 33 is a new order, providing for a centralized flow control, a Washington, D.C., system facility which attempts to coordinate flow control throughout the entire air traffic system.

THE COURT: Under the central flow control, that order—the control is from Washington, you say?

MR. CHRISTOPHER: Anticipating the testimony somewhat, your Honor, what happens is if the Los Angeles Center at Palmdale wishes to institute flow control on a flight leaving from Burbank to San Francisco, for example, before they institute that flow control and order a plane to be held at the airport of Hollywood-Burbank, they would be required to report their intention to Washington, D.C.

[86] THE COURT: I see.

MR. CHRISTOPHER: And get authorization or approval from the centralized flow control center.

THE COURT: All right. 33 is ordered in evidence.

(The exhibits previously marked Plaintiffs' Exhibits 32 and 33 were received in evidence.)

MR. CHRISTOPHER: Your Honor, on the point of your question, if I may call attention in Exhibit 33 to paragraph 6-A-1, bottom of the page—

THE COURT: All right.

MR. CHRISTOPHER: —and the sentence reading “CFCF” meaning Central Flow Control Facility—“shall: Manage the flow of air traffic throughout the ATC system to minimize en route delays and achieve the maximum utilization of the airspace.”

THE COURT: Yes.

MR. CHRISTOPHER: And continuing. And also subparagraph (2), “CFCF shall: Concur or indicate non-concurrence in proposed flow control restrictions by the ARTCCs”—which is the Air Route Traffic Control Centers—“unless mutually agreed alternative measures are coordinated with the affected center.”

THE COURT: Well, I suppose I will have to wait for the evidence, but is there any controversy as to just [87] what flow control is? Is flow control the scheduling of flights, generally speaking?

Maybe we better wait for the evidence.

MR. CHRISTOPHER: Well, I can—

THE COURT: As these matters come in, if it is not in controversy, why—

MR. CHRISTOPHER: I think, without anticipating the evidence, your Honor, I could take you back, if I may, to Exhibit 32 and—

THE COURT: 32. Yes.

MR. CHRISTOPHER: —invite your attention to the page which is marked page 129 and the subparagraph which is numbered 1141 which in subparagraphs A, B and C indicates the type of action which may be taken by the Los Angeles Center to establish a flow control on aircraft leaving on specified routes.

THE COURT: So far as the flight is concerned it says limiting the number of departures in a given time period.

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: That's C.

MR. CHRISTOPHER: Yes, your Honor. Or B, "Establish certain amount of separation either in terms of miles or minutes between aircraft."

THE COURT: Time or altitude or distance?

[88] **MR. CHRISTOPHER:** Right. Or subparagraph A there, "Clearing the aircraft on specified routes."

THE COURT: This is the flow control of the local station as such which has to be, you say, approved by the Washington office, the central flow control?

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: Exhibits 34 and 35, your Honor, which should, perhaps, be taken together, are the initial decision of the hearing examiner in Pacific Northwest-California investigation conducted by the Civil Aeronautics Board, Docket No. 18884. And 35 is the action of the Civil Aeronautics Board itself in that same investigation, Docket No. 18884 dated May 12, 1970.

The other was the order on reconsideration dated July 10, 1970.

THE COURT: How does this—excuse me.

MR. CHRISTOPHER: These two decisions, the initial decision of the hearing examiner and the decision of the Civil Aeronautics Board, award additional and new service to Hollywood-Burbank Airport to Continental Airlines. They spell out the use of Hollywood-

Burbank Airport as a satellite airport relieving congestion at Los Angeles International Airport by providing direct service from the San Fernando Valley area to Pacific Northwest as well as Northern [89] California cities.

I offer those in evidence, your Honor.

THE COURT: All right. 34 and 35 are ordered in evidence.

(The exhibits previously marked Plaintiffs' Exhibits 34 and 35 were received in evidence.)

MR. CHRISTOPHER: If I may, I'd like to invite the court's attention to certain pages in the examiner's decision.

THE COURT: 34?

MR. CHRISTOPHER: 34, your Honor. I first call attention, invite attention to page 3, which is farther along than you would expect page 3 to be, and the little paragraph there beginning "Of especial significance..."

THE COURT: Yes.

MR. CHRISTOPHER: That entire paragraph, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: Your Honor, I invite attention on page 4 to the paragraph beginning "The changes brought..." and so forth and continued over to the top line of page 5.

THE COURT: All right. The paragraph ending at the top of page 5?

MR. CHRISTOPHER: Yes, your Honor.

[90] And finally as to the hearing examiner's decision on page 33 I invite your Honor's attention to the middle of the paragraph commencing "Apart from..."

THE COURT: All right.

MR. CHRISTOPHER: Turning now to Exhibit 35

THE COURT: Does the reconsidered order affect any of these matters you have pointed out to me?

MR. CHRISTOPHER: No, your Honor.

THE COURT: All right. 35.

MR. CHRISTOPHER: I call attention first to—

THE COURT: Let's see. So there is no confusion here, 35—I find two documents in 35.

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: They are both orders of the Civil Aeronautics Board. One order is No. 70-5-52, the other is 70-7-49. All right. Then the document numbers are the same?

MR. CHRISTOPHER: One is the basic order and the other is the order on reconsideration, your Honor.

THE COURT: Yes. One is dated July 10, 1970?

MR. CHRISTOPHER: That is the order on reconsideration.

THE COURT: That's the reconsideration. And the other order is dated May 12, 1970, which would be the [91] original order?

MR. CHRISTOPHER: Right, your Honor.

THE COURT: Yes. Any reference?

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: Reconsideration, now, we are talking about?

MR. CHRISTOPHER: No. I am talking about the basic decision.

THE COURT: Yes.

MR. CHRISTOPHER: On page 6 I call attention to the sentence beginning, near the bottom of the page, "The most significant deficiency . . .," three lines up from the bottom, your Honor.

THE COURT: Yes. "The most significant deficiency, in our view . . .?"

MR. CHRISTOPHER: And over to the end of that paragraph on the top of the next page.

THE COURT: Yes.

MR. CHRISTOPHER: That is, your Honor, the only paragraph to which I call special attention.

THE COURT: Nothing in the reconsideration?

MR. CHRISTOPHER: No, your Honor. Just the portion I have called to your attention.

THE COURT: Very well.

MR. CHRISTOPHER: Your Honor, Exhibit for [92] identification 36 is a letter dated December 14, 1957, from the Mayor of Burbank to the Civil Aeronautics Board.

THE COURT: Ordered in evidence.

(The exhibit previously marked Plaintiffs' Exhibit 36 was received in evidence.)

[93] **MR. CHRISTOPHER:** I call attention to the second paragraph on page 1.

THE COURT: Very well.

MR. CHRISTOPHER: Exhibit for identification 37, your Honor, is the 1968 Annual Report of CAB, pages 14 and 15. I offer it in evidence, your Honor.

THE COURT: Ordered in evidence.

(Plaintiffs' Exhibit 37 for identification was received in evidence.)

MR. CHRISTOPHER: I invite the court's attention to the two paragraphs on page 14 under the heading "Airport Congestion".

THE COURT: Let's see, page 14, under "Airport Congestion".

MR. CHRISTOPHER: The first two paragraphs, your Honor.

THE COURT: Yes. This is 37. I have it. Those two paragraphs on page 14.

MR. CHRISTOPHER: Thank you.

Exhibit for identification No. 38 is the 1969 Annual Report, pages 13 and 14, which I offer in evidence.

THE COURT: Ordered in evidence.
(Plaintiffs' Exhibit 38 for identification was received in evidence.)

[94] **MR. CHRISTOPHER:** And again I invite the court's attention to a paragraph under the heading "Airport Congestion", this time appearing on page 13.

THE COURT: Yes.

MR. CHRISTOPHER: Exhibits for identification Nos. 39 and 40 are respectively resolutions numbered 14,506 of the Burbank City Council adopted April 18, 1967, and Resolution No. 15,190 of the Burbank City Council adopted May 13, 1969.

THE COURT: Concerning?

MR. CHRISTOPHER: The first one, your Honor, concerns the resolution requesting the CAB to authorize service by Pacific Airlines out of Hollywood-Burbank Airport, and the second resolution urges to the California PUC to approve certain service between Hollywood-Burbank Airport and other air terminals.

I offer those two in evidence. I handled them together only for purposes of expedition.

THE COURT: Exhibits 39 and 40 are ordered in evidence.

(Plaintiffs' Exhibits 39 and 40 were received in evidence.)

MR. CHRISTOPHER: 39, your Honor, I invite your attention to the third and fourth "Whereas" clause, indicating the availability of Lockheed Air Terminal

to [95] three million people and, conversely, the congestion and inconvenience at Los Angeles International.

On Exhibit No. 40, your Honor, I invite your attention to the fourth and fifth "Whereas" clauses.

THE COURT: Very well.

MR. CHRISTOPHER: For identification Exhibit No. 41 is a letter dated August 2, 1966, from the Mayor of Burbank to the Chairman of the Civil Aeronautics Board, and I offer that exhibit in evidence.

THE COURT: Exhibit 41 ordered in evidence.

(Plaintiffs' Exhibit 41 for identification was received in evidence.)

THE COURT: What is the date?

MR. CHRISTOPHER: August 2, 1966, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: Your Honor, Exhibits 42 through 46 are flight schedules of Continental Airlines, Air West, PSA, United, and Western.

The Continental schedule contains in its folder announcement of the new service which was authorized by the CAB order which came in as Exhibit No. 35.

The Air West and PSA schedules show service at Hollywood-Burbank Airport.

The United and Western schedules show service [96] from Los Angeles, which would use Hollywood-Burbank as an alternate, under the Operations Specifications for those airlines, to which we earlier referred.

I offer Exhibits 42 through 46 in evidence.

THE COURT: Exhibits 42 through 46 ordered in evidence.

(Plaintiffs' Exhibits 42 to 46, inclusive, were received in evidence.)

MR. CHRISTOPHER: I have come to a breaking point, your Honor.

THE COURT: It is 12:00 o'clock, so we will take our noon recess until 1:30, gentlemen.

MR. CHRISTOPHER: Thank you, your Honor.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m. of the same day.)

[100] LOS ANGELES, CALIFORNIA, TUESDAY, SEPTEMBER 15, 1970, 1:30 P.M.

THE COURT: Very well, gentlemen.

Let's see, we're down to Exhibit 47, was it? Mr. Christopher.

MR. CHRISTOPHER: Yes, your Honor. To conserve time I might attempt to take the next four documents, your Honor, 47, 48, 49 and 50 for identification, all relating to the Federal Aviation Agency's high density traffic rules.

47 is the notice of proposed rule making dated September 3, 1968.

Exhibit for identification No. 48 is the special air traffic rule itself relating to the high density traffic airports.

THE COURT: All right.

MR. CHRISTOPHER: Your Honor, pardon me.

THE COURT: They are all rules, but different dates.

MR. CHRISTOPHER: Yes, your Honor.

49 is the high density amendment dated February 24, 1969.

50 is a further amendment dated December 22, 1969, keeping in effect the high density rule.

THE COURT: Yes.

[101] MR. CHRISTOPHER: I offer all four exhibits, your Honor.

THE COURT: 47 to 50 ordered in evidence.

(The exhibits previously marked Plaintiff's Exhibits 47 to 50 were received in evidence.)

MR. CHRISTOPHER: Looking first at Exhibit 47, your Honor, may I invite your attention to the first four paragraphs on page 12581.

THE COURT: On page 12581. All right. The first four paragraphs.

MR. CHRISTOPHER: On Exhibit No. 48, your Honor, on the first page, which is 17896, may I invite your attention to the paragraph in the third column commencing with "In regard to some of the comments..." and extending to the end of that column. And in particular, your Honor, to the first paragraph which indicates that the high density rule was intended as an efficiency measure rather than being intended to correct the safety problem.

THE COURT: Yes. I remember I read the stipulation. In those airports involved under the regulation the FAA moved into the scheduling of flights.

MR. CHRISTOPHER: That's correct, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: Now, with your Honor's permission I'd like to correct an oversight which became [102] apparent this morning, and add, with the agreement of the court, to Exhibit No. 8 an order of the FAA permitting Hughes Aircraft Corporation to use the tradename Air West. That corrects and completes Exhibit No. 8.

Is that agreeable to you, Mr. Sieg?

THE COURT: Any objection?

MR. SIEG: No objection.

THE COURT: All right. How shall I describe it? This is an order dated June 15, 1970, of the Civil

Aeronautics Board on the application of Hughes Aircraft Corporation, and it is being made a part of Exhibit 8. Very well.

MR. CHRISTOPHER: Your Honor, I am going to pass Exhibit No. 51 as being more appropriately explained during testimony of the witness from Continental Airlines and then take two exhibits together, Exhibit Nos. 52 and 53.

Exhibits numbered 52 and 53 for identification are an affidavit of Frank A. Decker, who is general operations manager of Official Airline Guide. That's Exhibit 53.

Exhibit 52 for identification is the list of scheduled departures of jet aircraft for domestic carriers for one day in May, the 4th and 5th of May, 1970, between 11:00 p.m. and 7:00 a.m.; an IBM run showing the number of jet departures from each of the airports in which each scheduled airline operates for that day in May, together [103] with—

THE COURT: Excuse me. Did the listing show the day of the week involved?

MR. CHRISTOPHER: Your Honor, that is Monday night and Tuesday morning. The reason that day was selected is because May 4th is the day that the ordinance became effective.

THE COURT: I see. Monday is the 4th of May and Tuesday is the 5th.

MR. CHRISTOPHER: That's right, your Honor. The affidavit of Mr. Decker describes how this compilation was made. I think it is self-explanatory as to the way the print-out, computer run was made and how the tabulation of 1,009 scheduled jet departures during the hours between 11:00 p.m. on May 4th and 6:59 a.m. on May 5th was computed.

We offer these in evidence, your Honor.

THE COURT: Any objection to this affidavit? You are offering that affidavit—you mean the testimony of Mr. Decker?

MR. CHRISTOPHER: To explain the exhibit.

THE COURT: Any objection?

MR. SIEG: No, no objection, your Honor.

THE COURT: Very well. 52 and 53 ordered in evidence.

(The exhibits previously marked Plaintiffs' Exhibits 52 and 53 were received in evidence.)

[104] **MR. CHRISTOPHER:** Then for the final exhibit—

MR. SIEG: While we are on that particular point, would you mind just for my benefit and possibly the court's identify the letters for the Hollywood-Burbank Airport?

THE COURT: Identify the letters?

MR. SIEG: Yes. That are used in the left-hand column of Exhibit 52—

MR. CHRISTOPHER: I will do one better than that, so that it is clear to the court and counsel, and they will have a guide for all of these.

If you will look at Mr. Decker's affidavit, as an exhibit to that affidavit is an identification for each of the airports involved. The letters BUR are the identification letters for the Hollywood-Burbank Airport.

THE COURT: How many did you say were involved?

MR. CHRISTOPHER: Your Honor, there are 1,009 flights during this 8-hour period. That is jet departures of regularly scheduled aircraft.

THE COURT: As I understand it, these are identification letters of airports.

MR. CHRISTOPHER: That is correct, your Honor.

[105] THE COURT: All right. How many airports are involved in those 1,009 flights? With many of them there were no flights. I can see it shows two in one and zero. Many of the airports listed here there were no flights during that period of time; many of them.

MR. CHRISTOPHER: I don't believe I will be able to answer that question without making a computation. I will do that before the end of the day.

THE COURT: All right.

Is each airport different? Every airport involved here?

MR. CHRISTOPHER: This is a listing of all the airports.

THE COURT: 1,009 airports.

MR. CHRISTOPHER: No, sir. 1,009 flights, your Honor.

THE COURT: That is right, flights.

MR. CHRISTOPHER: 1,009 takeoffs.

THE COURT: I don't think it would be difficult to get the number, because I think there is about the same number of airports listed on each page.

MR. CHRISTOPHER: We will have that for you before the end of the day.

THE COURT: All right.

MR. CHRISTOPHER: As the affidavit of Mr. [106] Decker shows, what they did was to make a computer run of all of the airports which are listed from time to time in the official airline guide, to determine whether or not they had any flights during the so-called curfew hours.

THE COURT: Yes.

MR. CHRISTOPHER: And that produced the total number of flights, and as you observed it produced

the indication that a number of the airports had no flights during those hours.

The listings here, though, would be a comprehensive list of every airport from which federally certificated scheduled air carriers operated within the United States.

Mr. Sieg, did I answer your question adequately?

MR. SIEG: You haven't given me the letters—

MR. CHRISTOPHER: BUR.

THE COURT: It should be only one, shouldn't it?

MR. SIEG: Do you happen to have the page where the letters appear?

MR. CHRISTOPHER: They appear on page 0005 and it indicates zero rather than 1, your Honor, because of the one flight being a PSA flight, which is—

[108] MR. CHRISTOPHER: The case was filed, I believe, about the 14th of May.

THE COURT: We had a hearing on the 27th, I believe.

THE CLERK: Yes.

THE COURT: And then the hearing on the preliminary injunction was thereafter.

THE CLERK: The hearing was on the 27th.

MR. CHRISTOPHER: The temporary restraining order appears to have been issued on the 15th of May.

THE COURT: Yes, and the hearing on the preliminary was on the 27th.

MR. CHRISTOPHER: Right, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: The final exhibit to be offered at this time, your Honor, is another affidavit about which we have spoken to Mr. Sieg, an affidavit of Richard S. Shreve, who is Manager of the Cargo Services Administration of Air Transport Association of America. This is Exhibit for identification No. 54.

This affidavit reports that Mr. Shreve conducted a study to determine the amount of United States airmail transported by the certificated air carriers at four Airports: JFK, Los Angeles International, O'Hare and Atlanta during a one-week period during the so-called curfew hours and non-curfew hours.

[109] The affidavit shows that the result of the study indicates that for those four airports 48.21 percent of all airmail moved between the hours of 2300 and 0659 in the morning, so-called curfew hours.

We offer this affidavit in evidence in lieu of the testimony of Mr. Shreve.

MR. SIEG: May I inquire of Mr. Dau, is this affidavit—was it shown to me?

MR. DAU: No, I showed you the records on which it was based and that was one of the affidavits I pointed out to you this morning—

MR. SIEG: That you were adding.

MR. DAU: —that would contain a compilation of that information, rather than the voluminous documents.

MR. SIEG: As I recall, you showed me a document of some proportion.

MR. CHRISTOPHER: Yes, Mr. Sieg, that document is here in court for your inspection and the court's.

I also would like to make it clear that if you would like to have further time with respect to this affidavit you are welcome to inspect it at the next recess.

MR. SIEG: You have indicated I had agreed to this and I am not sure I have, in the context you have this document.

MR. CHRISTOPHER: If I indicated that, I [110] mispoke, Mr. Sieg. I thought it had been discussed with you.

I know you had not agreed with it.

MR. SIEG: All I can say is this is the first time I have seen the affidavit and I haven't had a chance—

THE COURT: You want to withhold offering it for the time being?

MR. CHRISTOPHER: Yes, your Honor, I will simply have it marked for identification and we will discuss it with Mr. Sieg if he has time during the recess.

THE COURT: Very well.

MR. PACKARD: Your Honor, we will call at this time Mr. David Simmons.

DAVID M. SIMMONS, called as a witness by the plaintiffs, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Would you state your name, please.

THE WITNESS: David M. Simmons.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. PACKARD:

Q Mr. Simmons, where do you presently reside?

A I reside at 729 North Camden Drive, Beverly [111] Hills, California.

Q By whom are you presently employed?

A By Lockheed Air Terminal, Inc.

Q For what period of time have you been employed by Lockheed Air Terminal, Inc.?

A Since October of 1946.

Q And in October 1946 you were first employed by Lockheed Air Terminal, Inc., in what capacity were you employed?

A I was employed originally in the accounting department.

Q What is your present capacity at Lockheed Air Terminal, Inc., as of this date?

A I am the president and also a director of Lockheed Air Terminal.

Q Have you been consistently employed then since October 1946 by Lockheed Air Terminal, Inc.?

A Yes.

Q Would you please relate for us, generally speaking, what your responsibilities and duties are as president of Lockheed Air Terminal, Inc.?

A As chief executive officer I have the general and active control over the business affairs and the activities of the company.

This would extend, of course, to the management [112] and operation of the Hollywood-Burbank Airport.

Q Is that one of your primary duties?

A The Hollywood-Burbank Airport?

Q Yes.

A It is, I would say, a primary duty.

Q Now, when you were initially employed in the accounting department, what were your duties? Would you please relate to the court your duties that you had at your initial employment, up to the present date.

A After about two years in the accounting department in 1949 I transferred to the operational phase of operations, airport operations.

This included negotiations of airline leases, contract administration, surveillance of the physical aspects of the airport.

I had a succession of titles in the operational phase leading up to 1956 when I was elected corporate secretary and operations administrator. At that point I had responsibilities over the operational phases of the field,

including, as I have stated before, the maintenance, et cetera.

[113] Q Prior to being employed by Lockheed Air Terminal, Inc., in 1946, had you been in any manner connected with the aviation industry, sir?

A Yes, I had been employed by Douglas Aircraft from the period 1939 to 1944. My initial employment at Douglas was in the material division.

In 1942 I was transferred overseas to assist in the construction of an air base in East Africa which Douglas had constructed—or was reconstructing under an Air Force contract.

Q From 1944 to 1946 were you in the Navy?

A I returned to the states in '44. I entered military service. I was a naval officer from '44 until '46.

My experience there was largely in connection with air stations. I participated in the reconstruction of the airport on Wake Island following the end of hostilities.

Q At the present time are you a member of any community or civic organizations?

A Well, I am a member of the Burbank Chamber of Commerce. I held a succession of titles with the Burbank Chamber. In 1947 I was president of the Chamber. 1967. I want to correct that.

Q And you were president of the Chamber of Commerce of Burbank?

[114] A Yes.

Q Now, could you describe for us generally the location of the Hollywood-Burbank Airport?

A The airport is located in the easterly portion of the San Fernando Valley. I would describe that as in the northerly portion of what we refer to as the L.A. Basin area, the L.A. Metropolitan area.

MR. PACKARD: I think we have marked here as Exhibit No. 1 a map. I would like to refer—may I approach the witness, your Honor?

THE COURT: Yes. If that map is large enough do you want to put it up?

MR. PACKARD: Yes, I think maybe that would be fine. Possibly, your Honor, in here would be fine (indicating).

THE COURT: Fine. Can everybody see it? Just so everyone can see it.

MR. PACKARD: I think, your Honor, this is a copy, our copy, of Exhibit No. 1.
Can you see it, your Honor?

THE COURT: Yes, I can see it.

MR. PACKARD: Maybe you can use the pointer here.

Q Will you point out—is it true that the pink color—the City of Burbank is portrayed on Exhibit No. [115] 1?

A Yes.

THE COURT: You can step down there if you want to.

THE WITNESS: Yes. That would be the City of Burbank.

BY MR. PACKARD:

Q I notice up at the top here this has an Automobile Club of Southern California at the top. That is a compass rose showing north, east, south and west; is that correct, sir?

A That is correct. North is on this.

Q Is it at the top?

A On the vertical axis.

Q Then on this Exhibit No. 1 does it show the Lockheed Burbank Terminal?

A The Lockheed Burbank Terminal is shown in what I would describe as the northwesterly portion of the pink shaded zone, which is the City of Burbank.

THE COURT: Is it outlined? Is there an outline there of the airport?

MR. PACKARD: You answer it.

THE COURT: To me from here it looks like it is outlined. It is outlined?

THE WITNESS: No, it isn't, your Honor. [116] Actually the pink designation portrays the City of Burbank property. The airport itself extends upward into this triangle immediately north which is not designated in pink.

THE COURT: I see.

MR. PACKARD: I am going to ask the witness with this red—I will tell you, rather than the red, give me a blue.

THE COURT: Here is a black grease pencil if you want.

MR. PACKARD: Fine. Thank you.

Q I am going to ask that with this black pencil you outline the Lockheed Air Terminal, Burbank Lockheed Air Terminal with the black. Just go around the boundary, Mr. Simmons, please, and just take your time. Make sure before you start marking.

(Witness marks on map.)

BY MR. PACKARD:

Q This is Tujunga right here (indicating)?

A This map is rather small. But in this area the border is somewhat checkered. There are third party ownerships in there. That—

THE COURT: It's not a smooth line, then?

THE WITNESS: Cannot be fined in this scale.

MR. PACKARD: That's the northeast corner.

THE COURT: All right. I see.

[117] Is there a highway that runs along the northeast corner there?

THE WITNESS: The San Fernando Road.

THE COURT: Yes.

THE WITNESS: Plus the Southern Pacific Railroad right-of-way.

THE COURT: I see your outline. All right. Go ahead.

MR. PACKARD: Your Honor, possibly after we finish here we can substitute this one for the one that is in evidence. Because he is marking on our copy.

THE COURT: I see. This is not the one in evidence. Is it the same?

MR. PACKARD: It's the same. So maybe with that understanding—fine.

Q Now, is part of the facility itself in the City of Los Angeles?

A That is correct.

Q I see. What portion is that?

A The aviation zone.

Q What do you mean by the aviation zone?

A This is a clear zone on the west side of Vineland Boulevard which is kept clear of all obstructions leading into Runway 7, the instrument runway.

Also the northerly portion of Runway 15 and the [118] contiguous taxiway areas and the land areas.

Q Now, you refer to a runway as Runway 7. Would you just put down a line and then put 7 from that runway so that we will know what you are referring to when you say Runway—just a line down and then put 7. All right.

Then I think you also—to clarify the record here, when you use the term 7, that's when you are heading or landing in an easterly direction; is that right?

A That is correct. I think that was very clearly defined in the previous testimony.

THE COURT: Yes. From west to east.

THE WITNESS: Compass heading of 70 degrees.
BY MR. PACKARD:

Q So if you turn around it would be 250 going the other direction, the same runway?

A Yes.

Q When we talk about Runway 25 or Runway 7, we are talking about the same runway only heading in different directions?

A That is correct.

Q Then you referred to Runway 15; is that correct?

A Yes.

Q Will you please mark that out? On Runway 7 you have indicated there is navigational aids which includes [119] an ILS; is that correct?

A That is correct. Runway 7 has been designated by the Federal Aviation Agency as our instrument runway.

THE COURT: What is the degree on 15? You gave me the degree on—

THE WITNESS: 15 is actually 150 degrees.

THE COURT: 15?

THE WITNESS: 15 is 150. The runways take their designation in terms of their compass headings.

THE COURT: Well, I thought you said 25 was 150.

THE WITNESS: No. Runway 25 would be a compass heading of 250.

MR. PACKARD: I think, your Honor, to clarify it so we understand, I think whenever a runway is given if you just add a zero—

THE COURT: I understand. But I didn't get the compass heading of 15.

THE WITNESS: 150.

THE COURT: Wait a minute. I am sorry. Oh, yes. 15. 7 is 70. 25. Plus 180, 250. 15 is what?

THE WITNESS: 150.

THE COURT: 150.

THE WITNESS: Would it help if I designate [120] the compass heading right along with the—

THE COURT: If you designate the runway by your marking, why, it will help pretty well.

MR. PACKARD: All right.

THE COURT: When we get 33, is that 330?

MR. PACKARD: Just to clarify the record—there has been some confusion. I think, your Honor, any time a runway is referred to as 33 or 15 or 7, if you just add a zero that's a magnetic heading of that particular runway whether it's Burbank or any place in the country.

THE COURT: I see.

MR. PACKARD: That's my understanding. If you just add a zero.

THE COURT: It would be 330, because you would add the 180. All right. I understand now.

MR. PACKARD: 180 is just the reverse direction. So you add 180 and that gives you—

THE COURT: That's the way they get the numbers, I guess.

MR. PACKARD: Yes.

Q I show you, I believe, what has been marked here in evidence as Exhibit 3 which is a photograph of the field when it was dedicated on May the 30th, 1930. Do you see that, sir?

A Yes, I do.

[121] Q And does that truly depict the condition that existed at the time of the dedication of the field?

A Yes, it did. It very clearly shows the predominant amount of the taxiways, hangars and other field facilities.

Q Did you happen to be present on May the 30th, 1930, when the airport was dedicated?

A Yes, I was present with my father. My father was a sportsman pilot and was quite interested in the development of the field. It was known as the first million-dollar airport in the United States. So I joined him. We flew out to the airport and observed the dedication ceremony.

Q Were there any particular features which made this particular site a particularly suitable site for an airport?

A It is my understanding that the developers of the airport were encouraged by some surveys that indicated that the San Fernando Valley is relatively fog-free as compared to the other areas of the city; there was an availability of land. While it was convenient to the L.A. metropolitan area there was not a proximity of population to the airport at the time it was developed.

Q Now, could you relate for us to the best of your knowledge some of the highlights of the development and [122] growth of the Lockheed Airport?

A Yes. Following the dedication the development of the field was rather dramatic in a sense. By 1934 it had been acquired by a subsidiary of what is currently United Air Lines. And a number of major air carriers operating into the L. A. metropolitan area began relocating flights into that area. By 1946 it became a predominant airport in the L. A. metropolitan area.

Prior to 1946, however, it was acquired by Lockheed Aircraft Corporation in 1940, and at that time Lockheed was engaged in the production of military

aircraft, the military aircraft of the type that needed larger facilities, larger airport facilities, and factory facilities. The airport, following the acquisition—the United States Government recognizing the importance of this war production acquired adjacent land and participated in the extension of the runways at Government cost. As a matter of fact, in this period around '42, '43, with the acquisition of the additional lands the airport assumed its approximate configuration which I have delineated with minor changes.

Q Did the Government install any portions of runway lighting or facilities?

A Yes. The Government installed the major portion of the runways, taxiways, the airport runway lighting [123] ing and also provided what I would call navigation lights to assist in the alignment of aircraft coming in on a runway.

Q Does the Government still own any portion of land surrounding the airport?

A Yes, the Government owns approximately 128 acres of—23 acres is leased to Lockheed Aircraft Corporation for the plant site. There is something over 100 acres that underlie what we call the runway extension, those Runways 15 and 7.

Q What do you mean exactly when you say underlies the runway extension?

A The runways are located on land owned by the Government.

Q And is that land within the City of Burbank?

A Partially so. The land situated on the west side of the airport underlying Runway 7 is in the City of Burbank. The Government ownership in the northerly part of the airport underlying Runway 15 is in the City of Los Angeles.

Q Now, would you relate for us somewhat the history of the growth of commercial airline traffic that was serviced by Lockheed Burbank Airport, say, from 1946—through 1946 to the present date? I mean has it been a consistent growth, or what transpired?

[124] A No. I believe it can be characterized as saying we have had our ups and downs. In 1946 I mentioned that the major airlines were operating all flights into the Hollywood-Burbank Airport. We had 1,200,000 passengers that year, 82,000 commercial flights, commercial movements.

In October of that year the major airlines moved to what was then called L. A. Municipal Airport, which is Los Angeles International. It was renamed.

In 1947, the following year, traffic dropped to 175,000 passengers. While that was a disappointing trend for us certainly we did have a couple of things happen that year that were encouraging. Both the Flying Tiger Freight Line and Slick Airways moved their main office and maintenance bases to Burbank.

Shortly thereafter the supplemental air carriers began operating at the Lockheed Air Terminal. There were facilities available and these were innovative small airlines that developed after the War. They were the first to offer the coach type air fare which was roughly half the cost of the first-class air travel that had been offered to the public heretofore. So the public was rather quick to respond to this type of service.

From the period, oh, '47 through '53 traffic grew to approximately 780,000 passengers by 1953.

[125] Q So you had then an increase from your 170 up to about—

A We, in effect, had a rebirth of passenger service.

Q Then what occurred after that?

A We maintained a fairly high level of public transportation during the period of the '50s. However, in 1959 we had another milestone year.

In 1959 it was the year that the pure jets were introduced to public service and the public was very quick to respond to the desirability of flying on pure jets. Almost overnight piston aircraft became obsolete. Aircraft fleets that had been worth many millions of dollars were suddenly impossible to sell.

And since the large jets that were introduced during the period '59, the large 707s and DC-8s could not operate from Burbank and public moved away again to the service offered at Los Angeles International Airport.

By that time, too, the major airlines had adopted the coach fare. So the combination of the coach fare and the jet travel prompted a gradual decline in passenger traffic, which commenced in '59 and continued.

Q What you are telling us is that when the pure jets of the 707s and DC-8s came in they required and necessitated a longer runway which you were unable to [126] accommodate them at Burbank and therefore they were unable to use your facilities, is that correct?

A That is correct.

Q I take it it is still true today,—

A Absolutely.

Q —to accommodate 707s or DC-8s.

A It is impossible.

Q All right. So as a result of new equipment being introduced into the industry it caused a decline in your passengers that were handled through Burbank Lockheed Terminal?

A That is correct.

Q What occurred after that? Was dual equipment put on the market?

A Traffic declined through—to 1965, and in and around 1965 there was an introduction by both the Boeing Aircraft Company and the Douglas Company of the small three-engine, two-engine aircraft, the 727 and the DC-9.

Q The 737?

A The 737 followed on later. Primarily it was the DC-9 and the 727-100.

Q And were they able to use the facilities at Burbank Lockheed?

A They were designed for a field such as ours, [127] and could very adequately and safely operate from the runways at Burbank.

Q Then what occurred after this took place, insofar as the operations of Lockheed Burbank were concerned?

A The public was quick to respond again to the availability of service which they found convenient and sought, and traffic has moved upward from the lull, I would say, of around 334,000 passenger in that year upwards to a million one seventy-eight in 1969.

THE COURT: What do you mean by "178"?

THE WITNESS: 1,178,000.

BY MR. PACKARD:

Q That was in 1969?

A That was in 1969.

Q So this brought you up to close to the peak that you originally had when you were serving the entire Los Angeles metropolitan area, is that correct?

A That is true. It's slightly below.

Q Now, do you have lease with the Federal Government insofar as any facilities that are being operated by them at the airport?

A Yes, we have a number of agreements, space agreements, with the Federal Aviation Agency on facilities which are owned and operated by the FAA at the airport. Would you like me to enumerate some of those?

[128] Q Well, first of all, do you have a lease with the FAA for the operation of the tower?

A That is correct. We have a space rental agreement. We provide the tower in accordance with their specifications and lease it to them on a space rental basis.

Q And their personnel entirely operate the tower, is that correct?

A Completely.

Q I believe what has been marked 29, referred to as "Agreement for Operation of Airport Traffic Control Tower" by the FAA.

Is that the document you referred to under which they operate the tower at the present time?

A That is correct.

MR. PACKARD: This is dated January 26, 1968, your Honor.

Q And that sets forth the terms and conditions under which the FAA operates the tower, is that a correct statement?

A That is correct.

Q And then there is certain government equipment used in the control of aircraft at Hollywood-Burbank, is that correct?

A That is correct.

Q I show you now what has been marked as [129] Exhibit 6 or part of Exhibit 6, and it consists of twelve items.

Is that the equipment list?

A Yea, this would be an equipment list of the U.S. Government equipment which is currently in use at the airport.

THE COURT: This is equipment other than the equipment which concerns the control tower, or does it include the control tower?

MR. PACKARD: It says like 1 and gives "Air Traffic Control Tower equipment located in Building 10" and then lists some of the things I think I wanted to refer to, like, "No. 8, Instrument Landing System," and we referred to that in connection with Runway 7.

Q Is that correct?

A That is correct.

Q This equipment here that has been listed, and rather than go through all of them, has to do with radar, navigational aids, radio equipment, transmitters and so forth, is that correct, the lighting and navigational aids?

A That is correct. It is primarily equipment to transmit and receive from aircraft, to locate aircraft, their position with regard to the airport, to aid and assist them in the proper navigation of the aircraft to the airport.

[130] THE COURT: That is a part of the tower control?

THE WITNESS: I would say that all of this comes under the control or is under the aegis of the tower.

There are such things listed here as runway lighting system. Runway lighting systems can be actuated in the control tower, depending on the runway in use.

In a sense, such things as the air surveillance radar, which is a radar, a continual radar sweep to locate existing aircraft within the zone of the airport and would have a read-out in Building 10.

[131] Q But certain equipment that is listed there physically located on the real property, so to speak, the ILS, and the like, and so forth, are physically located on the realty rather than in the tower.

A Remote from the control tower.

Q All right. In connection with your position as president of Lockheed Air Terminal, will you tell us, do you have anything to do in connection with approval of new or revised schedules for aircraft operating in and out?

A Our interest in schedules would be more from an operational sense. Reviewing the schedules from the standpoint of their compatibility with the other existing schedules of the airport. We have no, in a sense, direct control over the schedule.

Q I see. Apparently an airline has to obtain first route approval, is that correct?

A That is correct.

Q And an award is made by the CAB for a route?

A An award would be made by the CAB for interstate air commerce.

Q PUC?

A PUC for intra, that is correct.

Q Then how is that brought about, these awards, do you know?

[132] A Well, air transportation has got to be responsive to public need. Public hearings are held. An airline seeking to serve a population center or through a particular airport must file their intent to do so. They must demonstrate through public hearings that a public

need exists and that they are in a position operationally and financially to adequately serve that market.

Then after due deliberations, either by the Civil Aeronautics Board or PUC, a decision is handed down as to whether a route award will be made to that particular airline.

Q And is there some coordination that takes place by the air traffic control tower and the airlines as to the filing of their schedules so they are aware what schedules they are going to be operating under?

A Yes.

Q Will you please explain how that is handled?

A Yes. It is my understanding that all scheduled airlines must file an instrument flight rule flight plan. These schedules are normally filed, it is my understanding, at least 30 days prior to initiating any flight activity. They are filed with the Federal Aviation Air Traffic Control Center. The Center, as I understand it, coordinates and examines the new schedules to determine their compatibility with other traffic moving into the area.

[133] Q And then I take it you are aware in the management of Lockheed Air Terminal all the scheduling and any problems that develop, you have facilities available to handle the passenger load and so forth.

A That is correct.

Q That is your main function.

A That is our main concern, to make certain that the public's requirement on the airport, that the requirements are served.

THE COURT: The airport, I assume, is consulted by the CAB or the Public Utilities Commission to determine whether their facilities are sufficient to justify the awarding of the route which had been applied for by the carrier to your airport.

THE WITNESS: That is correct, your Honor. Normally, we do file a brief or appear at those public hearings.

THE COURT: You file a brief with the application of the carrier?

THE WITNESS: We will support a carrier to demonstrate that we are in full accord, that we believe their contention as to the market—the availability of the market and of the fact that we do have—

THE COURT: The facilities to take care of it.

[134] **THE WITNESS:** The facilities to accommodate air service.

BY MR. PACKARD:

Q You do support many times these applications that are made for the PUC or the CAB.

A That is correct.

Q It is your function in the management of Lockheed Air Terminal to do that.

A Yes, it is. It is a quasi-public utility we operate, and we are supported by such agencies, such civic groups as Chambers of Commerce in these endeavors. We are often aided by County representation, to show the need for traffic and, of course, by the City of Burbank.

[135] **Q** While you were on the Chamber of Commerce that gave you a closer feeling towards some of the needs in the community by which you could better serve Lockheed Air Terminal; is that correct?

A That is correct.

Q Now, at the present time what approximately would be the number of air carrier movements out of Lockheed's Burbank Terminal?

A The air carrier movement on an—

Q Annual basis.

A —annual basis would be in the order of 32,000 to 33,000. That would be a 1969 figure. I estimate it will be slightly—no. Actually we are running below—our air carrier movements are running below last year, so I would assume it would be somewhere in the 32,000 area for the current year.

Q How many passengers would that be, approximately?

A For the current year?

Q Yes.

A Perhaps a million three, a million four hundred thousand passengers.

Q At the present time are these movements in connection with intrastate as well as interstate carriers?

A Yes, correct.

[136] Q What carriers operate interstate?

A Interstate?

Q Interstate, yes.

A Air West and Continental are the primary interstate carriers at the present time.

Q In connection with the statistics which you have given us as far as the air carrier movement in the past years, what percentage of those are on pure jet?

A Approximately 97 percent.

Q Would you relate to us the equipment that is used by the operators on those pure jets at the present time?

A Yes. Currently there is the Boeing 727-200, the Boeing 737, and the DC-9.

Q In addition to the airlines' air carrier operation do you have any non-air carrier jets operating out of Hollywood-Burbank?

A Yes.

THE COURT: What do you mean by "non-air carriers"? Freight?

MR. PACKARD: I was talking about general aviation, privately-owned corporate jet operations.

THE COURT: I see.

THE WITNESS: Yes, we have quite a substantial traffic of corporate jet movements into and out of [137] the airport.

BY MR. PACKARD:

Q Could you name some of the corporations that are based at Hollywood-Burbank?

A Union Oil Company operates two jets.

Sears & Roebuck.

The Fluor Corporation.

Ambassador College.

Cal State Jetways.

Belridge Oil Company.

Q What type of aircraft do these companies operate, various equipment?

A They range from the Lockheed Jetstar, the Gulfstream II, DeHavilland 125, Lear Jets, the French Falcon. Perhaps a Watch Commander or two.

Q Approximately how many movements of this category of equipment or aircraft take place each month, would you say?

A Just as an average I would say on the order of 775.

Q Are some of these movements at night?

A Approximately 60.

Q Do you have any jet cargo carriers operating out of Burbank?

A No. When the Flying Tigers relocated their [138] main offices to L.A. International the last of the pure cargo operation disappeared. They did transition with some jet aircraft, but that ended pure jet.

Q Now, there has been some evidence here to the effect that Hollywood-Burbank Airport is used as an alternate for LAX; is that correct?

A That is correct.

Q Do you know for what carriers?

A Primarily for United Air Lines and Western, PSA, and to a lesser extent Air West.

Q We talked about using it as an alternate. What is the purpose of an alternate? Maybe you had better explain to the court what we are talking about.

A We have abbreviated the title. It's a weather alternate. It is the use of the Hollywood-Burbank Airport when the Los Angeles International Airport, either through weather or for some other reason, it's impossible for aircraft to operate from their runways. And in those instances we call it an alternate operation. They use the facilities of the Hollywood-Burbank Airport.

Q Now, can you tell us approximately how often Hollywood-Burbank is used by scheduled airlines as an alternate over a year period, or any figures you may have in mind in that regard which may be of some help to the court?

[139] **A** Well, the vagaries of nature being what they are it varies substantially from year to year.

So, say, a three-year basis, we examine '67, '68 and '69, LAX was closed about 470 hours.

Q I see.

A And during this period—

THE COURT: Are those for three years or each year?

THE WITNESS: For those three years cumulative.
BY MR. PACKARD:

Q You ran some studies and this is what your studies indicated?

A Indicated, yes.

Q That was approximately 470 hours for the years '67, '68 and '69?

A That is correct.

Q During that period of time the Hollywood-Burbank Airport was able to provide an alternate facility?

A For virtually that entire period.

Q All right.

THE COURT: But not for the big jets, I guess. Not for the big jets?

THE WITNESS: No.

THE COURT: All right.

[140] What do they do, go to Ontario?

THE WITNESS: There are a number of airports. We receive them at Ontario. Some are delayed at Phoenix and Las Vegas, Palmdale.

BY MR. PACKARD:

Q In 1969 did you have any figures as to how many flights, say, Western or United you handled as an alternate?

A It's my recollection that we handled—between Western and United, something around 140 flights for those three years; not including, of course, PSA and Air West.

Q Now, this morning when opening statements were being made there was some reference made to the fact that under the 1970 Airport Act that the Lockheed Hollywood-Burbank Airport would not be entitled to any federal aid. Do you recall something of that reference?

A Yes, I do.

Q Would that have any effect other than receiving federal aid upon the operation and use of Hollywood-Burbank Airport?

A No. As a private airport we have never been a recipient of federal aid in the sense of grants that are extended to all public airports. However, the Federal Airport and Airways Act of 1970 contains a stipulation that [141] all airports conducting commercial air carrier activities will file for authority under the new Act for certification.

Q Well, the point I wanted to make is that the Act is applicable to Hollywood-Burbank?

A Very much so.

Q And the fact that you are privately—

MR. SIEG: Just a moment. May I object to this argument in terms of the question, your Honor? I believe the Act speaks for itself.

THE COURT: Yes, it speaks for itself. But this man testifying is an expert in this field. I would let him testify. On cross examination, why, you can bring out anything that you feel is, you know, erroneous.

I think it will save us time. All right.

BY MR. PACKARD:

Q My question was, is there any distinction contained within the Act of applicability to a privately-owned airport as opposed to a publicly-owned one? Do you understand what I am getting at?

A I understand.

Q Would you explain that to the court?

A It's my understanding that the Act would apply to us.

THE COURT: In other words, you have to be certified?

[142] THE WITNESS: We have to be certified.

THE COURT: Even though you are a private airport?

THE WITNESS: Correct. We intend to file for the federal certification.

THE COURT: That applies to any airport that is handling flights which involve interstate carriers; is that what you are saying? Is that the reason that you have to comply, because you handle interstate carriers

THE WITNESS: Certainly interstate carriers. I am not certain that it is refined that far. I believe it would apply to air carriers which might be intrastate. Intrastate, that's the only distinction. I'm not up on that, and, quite frankly, I can't testify to it.

THE COURT: All right. Go ahead.

MR. PACKARD: All right.

Q In closing, can you give us briefly the role that Hollywood-Burbank Airport will play in the future in the airport satellite system, as you understand it, and in the future, what you expect for the future?

A Well, there is greater emphasis on the development of satellite airports. The Civil Aeronautics Board has recognized the general congestion that exists at the major airports in and around the United States, the major population centers. There has been a recognition and, [143] certainly, in this area that satellite airports must recognize that they are in a position to more conveniently serve the population as the highways become increasingly congested, it becomes more difficult to reach the major airports.

Accordingly, we certainly hope to be in a position to serve this increasing public need to the extent that it develops at the Hollywood-Burbank Airport during the coming years.

MR. PACKARD: That's all I have, your Honor, with the exception that I would like to substitute for

the Exhibit 1 the one that is on the board here marked May we do that, your Honor?

THE COURT: Any objection to that?

MR. SIEG: None, your Honor.

THE COURT: All right. We will substitute the one on the board which Mr. Simmons has marked for the one in evidence.

MR. PACKARD: All right.

With that, that's all, your Honor.

THE COURT: Very well.

Cross-examine.

CROSS EXAMINATION

BY MR. SIEG:

Q Mr. Simmons, as I took down your testimony, [144] you have been with Lockheed Air Terminal, Inc., since 1946; is that correct?

A That is correct.

Q At that time who held the capital stock of Lockheed Air Terminal, Inc.?

A The Lockheed Aircraft Corporation.

Q In its entirety?

A In its entirety. We are a wholly-owned subsidiary of the Lockheed Aircraft Corporation.

Q It has been so at least since you have been connected with the company?

A It has been so since the purchase by Lockheed that I mentioned in the brief history in 1940.

Q Fine. And it is so at the present time?

A That is correct.

Q Has Lockheed Air Terminal, Inc., ever had a different name, different corporate name?

A Yes.

Q Would you explain?

A The airport was originally called United Airport. The original holding company, as I recall, was United Airports Transportation Company. In 1934 the corporate holding company's name was changed to United Air Lines Transportation Company. No, I'm incorrect on that. It was changed to United Airports of California, Ltd. The [145] stock at that time was controlled—was owned by what is now United Air Lines. The name was changed in 1934 from United Airports to Union Air Terminal. Then in 1940, in November, when the entire stock was acquired from the United Air Lines organization, the name was changed to Lockheed Air Terminal.

Then subsequently we changed the name to the Hollywood-Burbank Airport.

Q But the corporate name—

A But the corporate title, the corporate name commencing in 1940 has remained unchanged: Lockheed Air Terminal, Inc.

[146] Q I believe you indicated between or around 1943 substantial improvements were made to the airport?

A That is correct.

Q And were these financed by the United States Government or Lockheed Air Terminal, or some other corporation?

A It is my understanding that they were financed entirely by the United States Government.

Q This was in connection with the war production capacity?

A War production capacity at Lockheed at the time.

Q Now, were the runways enlarged at that time to their present length?

A The runways were expanded to full 6,000-foot lengths at that time. There has been an additional—some 20 years ago an additional 900 feet on Runway 15 for takeoff only but not for landing, so that the runways in effect were extended to 6,000 feet at that time, and basically remain at the same length at the present time.

Q You say the further extension on Runway 15 was accomplished about 20 years ago. This would be what, about 1950?

A Between—I can't recall precisely, but it would be in the period perhaps 1951 to '53, '54.

[147] Q At which end—I realize when we spoke of Runway 15 we are speaking of the north-to-the-south runway, as I recall it.

Which end of that runway—to which end of the runway was the extension made, to the north or the south?

A It was made on the north.

Q And how long—you have indicated that the prior improvements extended the runways to 6,000 feet. This added another 900 feet to Runway 15?

A That is correct.

Q And that is the runway for planes taking off, is that right?

A That is correct.

Q And those planes fly immediately over the City of Burbank?

A That is one of the runways for taking off.

Q Yes. But we are talking about Runway-15 at the moment.

A Yes.

Q Now, is that the longest of the four—I shouldn't put it in terms of four, 15 and its alternate heading, which is what, 33?

A Yes.

Q Is that the longest of the runways?

[148] A That is correct.

Q What is the present length of the Runways 25-7, for convenience?

A Approximately 6,000 feet.

Q Do I understand that Runway 15 we have just referred to is a preferential runway?

A Yes.

Q And why is that so, Mr. Simmons?

A The designation of a preferential runway usually follows either a terrain advantage or more—I would say more probably because of the favorable wind direction, the predominantly favorable wind direction.

Q Does downhill or uphill slope have anything to do with the preferential runway?

A It would be one of the components that would be considered.

THE COURT: You are talking about 15, now?

MR. SIEG: Yes. Well, I was talking generally—

THE COURT: I know you were. But you were talking about 15 that takes off over Burbank?

MR. SIEG: Yes.

THE COURT: That is the preferential runway, is what you said.

[149] BY MR. SIEG:

Q Isn't it a fact that Runway 15 slopes downward in that direction?

A The entire slope of the San Fernando Valley in that area is down and it follows the natural contour of the terrain.

Q Is that a factor which makes Runway 15 a preferential runway?

A I am a little out of my field here, but I think the wind direction would be more of a prevailing consideration than the slopes.

THE COURT: You say slope, are you talking about grade, that is, the elevation?

THE WITNESS: Yes. There is a grade differential between where I designated 15 and the area which—if I may point it out.

THE COURT: Yes. 15 is 150, so it would be almost north and south.

THE WITNESS: Yes, the whole terrain—this is hill area (indicating), and the whole terrain of the Valley slopes.

[150] THE COURT: It slopes from north to south?

THE WITNESS: From north to south.

THE COURT: Yes.

THE WITNESS: So following the normal contour of the valley this runway is higher at this end than this (indicating).

THE COURT: The north end is higher than the south end.

THE WITNESS: Of course, it is an advantage on takeoff. It is also an advantage because the terrain south of the airport drops away, so the aircraft in addition to their climbout have the advantage of getting additional altitude by virtue of the dropoff of the terrain.

THE COURT: Is there also a prevailing southerly that makes it good?

THE WITNESS: Yes, the wind rose generally is in this direction, the wind direction.

THE COURT: Southerly.

THE WITNESS: Right.

THE COURT: All right. Go ahead.

When I say "southerly" I mean it is a southerly wind.

THE WITNESS: A wind that blows from the south.

THE COURT: Yes.

[151] THE WITNESS: I have never been able to designate—

THE COURT: That is what I mean when I say "southerly".

THE WITNESS: That is right.

BY MR. SIEG:

Q Now, you have indicated that 1965 was the first year that pure jet aircraft was introduced at the airport?

A No, I indicated that 1965 was the first year of a rebirth of jet activity. We have had for many years jet, pure jet activity. We developed the first pure jet fighter for the United States Air Force and its initial test activities were all conducted at that airport.

Q What period was that?

A This would precede my tenure. I would say in the period immediately following World War II.

Q As far as traffic of any consequence or nature, pure jet travel aircraft, '65 was the year.

A It would be the first year of commercial jet activity.

Q Can you give me some idea of the amount and the increase in the use of these pure jet 727's and DC-9's, from '65 to, say, the present, or through 1967?

A On a basis of, say, daily flights?

[152] Q Yes.

A Last year we had an average of—we averaged 90 flight movements. That would be landing and takeoff. So that would mean there were 45, approximately 45 pure jet takeoffs.

THE COURT: How long?

BY MR. SIEG:

Q In a day?

A A period of a day.

THE COURT: 24 hours.

THE WITNESS: I am sorry, your Honor. A period of a day. My recollection would be that there were perhaps 30 pure jet takeoffs in the period of a day in 1965, '66 area, in that neighborhood.

BY MR. SIEG:

Q 15 landing and 15 taking off?

A No, the latter figure I gave you were takeoffs.

Q Were just takeoffs?

A Yes.

THE COURT: 60, then, total, in and out.

THE WITNESS: Yes.

BY MR. SIEG:

Q What you are saying is that from this—'65 was a total of 30 takeoffs as compared to, say, 1969, [153] when there were 45?

A Average 45 takeoffs in the period of a day, yes.

Q You are talking about a four-year period and the increase.

A In that vicinity, yes. As I mentioned earlier, that even though our traffic at the Hollywood-Burbank Airport is up approximately 20 per cent of the first seven months of this year, the aircraft movements are down 22 percent.

Q Why is that?

A Well, it is possibly due to the larger configuration of the aircraft. The 727-200 hauls more people. There are just more seats available on the aircraft, so you can move a larger number of people with pure takeoffs, and in the current year we lost the services

of Air California, which was an intrastate carrier that had previously—that had operated all the period of 1965.

THE COURT: Where did they go, to Orange County?

THE WITNESS: Yes, sir.

THE COURT: When you say traffic, Mr. Simmons, are you talking about passengers?

THE WITNESS: Yes.

THE COURT: You are not talking about the [154] movement of planes? When you say the traffic was up—

THE WITNESS: The people. We refer to traffic, that is our common denominator on our activity. That is revenue passenger traffic generated at the Burbank Airport.

THE COURT: Sometimes we talk about automobile traffic, we don't use it that way. I want to be sure I understand the terminology.

When you talk about traffic, you are talking about passenger traffic.

THE WITNESS: That is correct.

THE COURT: As distinguished from the movement of planes. All right.

THE WITNESS: The movement of an aircraft is a landing or a takeoff.

THE COURT: Or.

BY MR. SIEG:

Q You have indicated that your airport cannot accommodate the 707 or DC-8.

A That is correct.

Q I assume that is because of the length of the runways?

A That is correct.

Q Are there any standards imposed on you by any governmental agency or otherwise that sets standards of [155] runway lengths for the various types of aircraft?

A The Federal Aviation Agency does.

Q What is the minimum length for runways for the 727, either the 100 or the 200, and the DC-9?

A The minimum runway?

Q Minimum length.

A That is a difficult question to answer. I am not sure you have the right witness on the stand. It varies, of course, by the altitude, the heat. There are a number of components that influence the actual effective length of a runway. You would almost have to say a runway at a certain altitude during that—in connection with a certain temperature range, and I am just not well versed enough on those components to really give you a valid answer.

[156] Q Well, let me ask you this, Mr. Simmons. All these variables that you referred to, have there been occasions when your runways could not be used for the 727 or the DC-8 because of temperature conditions, and so forth?

THE COURT: DC-8?

THE WITNESS: DC-8?

MR. SIEG: I am sorry. The DC-9 or the 727.

THE WITNESS: No.

BY MR. SIEG:

Q You haven't found in any situation that they were inadequate to serve this type of jet aircraft?

A No.

Q Now, do you happen to know the length of the runway, minimum length required for the 707?

A My response there would be again—would be to introduce these components that have quite an effect on

the actual—the effective runway length. I am not content with that.

Q Well, I didn't mean to ask you something—I thought you responded to the effect that there were certain regulations specifying lengths of runway for the various types of aircraft.

A Well, I could answer—I could answer you generally that 6,000 feet would be inadequate for a 707.

Q Would be inadequate?

[157] A Would be inadequate for a 707 with a full gas load and a full passenger load. A 707 could be flown in very safely into Burbank for maintenance without a passenger load. It is the weight of the aircraft, too, that's one of the other components in the formula.

Q How about a 6,900-foot runway?

A For 707?

Q Yes.

A No, sir.

Q Too short yet?

A Too short.

Q Now, back to the more important feature. The corporate jets as you have described them that operate from the airport, you have indicated several companies. I believe you have also indicated that the cargo operations have ceased.

A That is correct.

Q The corporate jet operations, then, are primarily what? Passenger travel to various points within the state or without the state?

A Yes.

Q They are not cargo-carrying operations?

A No.

Q I assume Lockheed—well, let me ask you the question directly. Does your company, Lockheed Air Terminal, [158] Inc., have any corporate jet or jets that it operates?

A No, we operate no corporate jets.

Q How about Lockheed Aircraft Corporation?

A They do operate, of course, a jet.

Q One?

A It varies. We have several divisions in our company, and different divisions have jets. Not all operate with any frequency into Burbank. We have a corporate jet stationed at Burbank.

Q What type is it?

A It is the Lockheed Jetstar.

Q That has how many engines?

A Four small engines aft-mounted on the fuselage.

Q Is this what is called within the term of a pure jet?

A It's a pure jet.

Q But there is only one?

A One currently operating from Burbank.

Q Now, you have given us certain figures regarding air carrier movements. And I think you classified—you differentiated between the air carrier and these corporate jets, did you not?

A That is correct.

Q Of the 32,000 air carrier movements that you referred to, I believe, in '69—was it, roughly?

[159] A Thirty-two to thirty-three thousand.

Q Thirty-two to thirty-three?

A Yes.

Q —how many of those particular air carrier movements were between the hours of 11:00 p.m. and 7:00 a.m. in the morning?

A That would be during 1969. I don't believe that we have any statistical figures that would show that. That would include, of course, the PSA flights.

Q Yes.

A It would also include certain charter flights or alternate field flights that might have been generated during that year.

It's not a figure that we would be able to statistically substantiate.

Q Well, let me ask it this way, and maybe we can at least get some of the facts. As far as interstate carriers, during, say, the year prior to May 4th of this year, the effective date of our ordinance, the one that's in issue here, there were no interstate operations as far as takeoff between the hours of 11:00 p.m. and 7:00 a.m. in the morning, air carrier operations?

MR. PACKARD: You are talking about regular scheduled or—

MR. SIEG: I am talking about—

[160] THE COURT: Interstate, he said.

THE WITNESS: Yes. Interstate. And I am trying desperately in my mind to recall at what time Air West had a takeoff early in the morning during that year preceding the curfew.

THE COURT: Did they have a regularly scheduled takeoff, Air West?

THE WITNESS: I believe they did. They had a very early morning takeoff. I can't recall what time, but I know it came in and departed at a fairly early hour.

THE COURT: You mean before 7:00?

THE WITNESS: My recollection it was.

THE COURT: All right.

THE WITNESS: I may be disproved.

THE COURT: It can be checked out easy enough.

We will take our afternoon recess now, gentlemen, for about ten minutes.

(Recess taken.)

THE COURT: Very well, Mr. Sieg. You may proceed.

MR. SIEG: May I proceed, your Honor?

THE COURT: Yes.

BY MR. SIEG:

Q Mr. Simmons, have you had an opportunity to verify your thinking that Air West had a flight during the [161] year prior to May 4th of this year taking off between the hours of 11:00 p.m. and 7:00 a.m.?

A No. I was unable to substantiate that.

Q So as it stands here your testimony—or your previous suggestion is unsupportable at the moment?

A That is correct.

Q Now, as to intrastate carriers, and referring again to the hours of 11:00 p.m. to 7:00 a.m., we have stipulated already to the fact that there was a Sunday night flight 11:30 p.m. which you, I am sure, are familiar with. Were there any other intrastate flights by air carriers other than the PSA 11:30 flight, p.m. flight on Sunday?

THE COURT: Commercial carriers; is that right?

MR. SIEG: Yes. Commercial.

THE WITNESS: Commercial. If we are trying to define the total number in a year, it would be difficult for me to say because of the—

THE COURT: No. He is just asking you, as I understand it, were there any others. Now we know about PSA, the 11:30 flight. Were there any other commercial intrastate flights that were scheduled between 11:00 and 7:00?

Is that your question?

MR. SIEG: Yes, your Honor.

THE COURT: Yes.

[162] MR. PACKARD: Well, your Honor, you have used the term scheduled, and I don't think Mr. Sieg used the term scheduled. So I think we should understand whether we are talking about scheduled flights on a scheduled departure or whether we are talking about flights.

THE COURT: But my question includes scheduled. Mr. Sieg said that was his question, so it's scheduled intrastate flights other than the PSA during that period, during those hours.

THE WITNESS: I can't be certain of that. Air California may have had a flight during that period, I don't—

THE COURT: When did they move? Didn't they move down long before that?

THE WITNESS: They ceased operation at the Hollywood-Burbank Airport January the 15th of this year, your Honor.

THE COURT: Well, then, from May they wouldn't have been there?

THE WITNESS: You are talking about May—that preceding year, I think you said.

MR. SIEG: Preceding May of this year.

THE COURT: May of this year.

THE WITNESS: No. PSA would have been the only carrier.

[163] BY MR. SIEG:

Q Now, do you have any information or approximation as to the number of what you have referred to as corporate jets taking off between the hours of 11:00 p.m. and 7:00 a.m. in the morning during the year prior to May 4th of this year on the average, or whatever—

A We have no statistical information. I had indicated previously from the best judgment in reviewing our records that approximately 60 jets per month took off during the hours of darkness. I don't know whether the figure of approximately half that number during the curfew hours would be appropriate or not.

Q You just don't know?

A I don't know. Our records are not confined to that information.

Q Let me then go to this matter of applications to the CAB or PUC. In connection with such applications is my understanding correct that the applicant, whatever airline it may be, must satisfy the particular board that it has contracted for or arranged for, or whatever the legal arrangement is necessary, for space for use of your airport for the proposed route that is under consideration?

A I am not certain that that is a condition in the grant of the authority by the Board. We have made it a practice of advising them.

[164] Q So, you mean some airline—and I can't think of one offhand other than the ones we have been discussing—can simply go to any of these boards and say that "We want to use Hollywood-Burbank as a stop" or "as a landing or takeoff facility" and your consent is not necessary?

A The answer to your question has never been put to a test. We have always supplied information in those instances.

Q Well, you—

A We had excess capacity for a number of years, so it has not really been a problem.

[165] Q When you entered into contractual arrangements with these various airlines, as to the

charges you will make for use of your facilities, do you not?

A That is correct.

Q And you agree on these matters, do you not?

A This is correct.

THE COURT: You mean before the application is filed, is that what you mean?

THE WITNESS: No, not necessarily.

THE COURT: Not necessarily?

THE WITNESS: No.

THE COURT: Before an application is filed by a carrier, wouldn't the carrier check with you before it would represent to the CAB or the Public Utilities Commission that—before they would apply for a route to use in your terminal?

THE WITNESS: In general conversation, but nothing formal, not necessarily.

THE COURT: They wouldn't check with you first?

THE WITNESS: Yes, but no formal documents.

BY MR. SIEG:

Q At no time no formal documents?

THE COURT: Are you talking about before the application is filed?

[166] MR. SIEG: I am covering both before and after.

THE WITNESS: No, I don't think an airline would sign—ever in any instance sign a formal document for space prior to being granted the authority.

BY MR. SIEG:

Q Let me ask you this: On the use of your airport as an alternate to LAX, is there not a charge imposed by you, as Lockheed Air Terminal, Inc., for the use of your airport as an alternate?

A That is correct.

Q All right. Now, is this on the basis of a certain schedule of rates that you adopt from time to time?

A That is correct.

Q And this is a schedule which you, as Lockheed Air Terminal, Inc., put out?

A That is correct.

Q And does any body approve that schedule of rates?

A Any—define "body."

Q Any body, the CAB, the FAA or what-have-you?

A No.

Q In other words, you establish your own rates.

A That is correct.

Q And no one controlled you with respect to those [167] rates?

A No.

Q All right. Now, let's get to, if I may, the use of your airport as an alternate to LAX.

At the present time how many air carriers use your facilities as an alternate?

A Predominantly United Air Lines and Western would be second in the usage.

Q All right. That is two. Any others?

A Air West, PSA, and I am quite certain that Continental will be soon using the facilities.

Q All right. When LAX is fogged in or unable to receive air carriers of these, or air transports of these particular air carriers, do you have any regulations that you impose upon them regarding their landing or taking off from your airport?

A Are you indicating any regulation that we imposed upon them, other than what the FAA—

Q Yes.

A Of course, all of their flight activity into and out of the airport is under the FAA control.

Q I understand that.

A Operationally we may impose regulations on the airlines, using the airport, because at such time as we have an alternate field we may, in effect, have a large [168] number of aircraft suddenly on the field that we are not equipped to handle, so we from time to time impose gate restrictions and parking restrictions, et cetera.

Q Well, let me try to get you an example. I would assume at some time in the course of a year, for example, with LAX closed in that a carrier or an air transport would come into your airport, say, around 2:00 a.m. in the morning.

A Yes.

Q All right. Now, has that occurred?

A The field is open.

Q Yes. 2:00, 3:00, 4:00 a.m., or whatever.

Now, as to when your airport is so used as an alternate, do you have any restrictions as to when that plane, that particular plane will leave your airport?

A Some time ago because United had such a volume of planes that used to land there, United became the largest carrier in the area, we imposed certain restrictions as to their takeoff because of just the physical problem of handling the planes on the ground, the passengers and so forth. So we worked out an understanding with them with respect to holding the planes and certain hours for departure.

[169] Q May we be specific on what you did impose and when?

A We had an understanding with them that the flights would not take off before 7:00 o'clock.

THE COURT: Regardless of when they came in?

THE WITNESS: No, if they came in in the early morning hours.

THE COURT: After 12:00?

THE WITNESS: 12:00 o'clock.

BY MR. SIEG:

Q: And they abided by these restrictions?

A: Yes. Normally, in a fog condition where they come in at that hour L.A. International normally doesn't open until 7:00 or 8:00 o'clock in the morning.

Q: And then these jets, would they then return or go to LAX, would that be their procedure?

A: To their destination, yes, LAX. They might, for example, be turned around and make their departure from Burbank.

THE COURT: But they wouldn't go to the large jet fields, like Ontario or Palmdale?

THE WITNESS: We are again, your Honor, talking about the small jets.

THE COURT: I know we are, but I say you wouldn't reroute them?

[170] THE WITNESS: No.

THE COURT: You say if their destination is Los Angeles, Los Angeles is fogged in, they stay there at Burbank until Los Angeles opens?

THE WITNESS: They either stay at Burbank until Los Angeles opens or they are serviced and turned around, as we call it. They are made ready for a flight departure to their other destination.

THE COURT: But never to the alternate fields for the big jets, if you follow me.

THE WITNESS: I am not sure that I do. They would—

THE COURT: As I understand it, the alternates for the big jets go to these other ones, Palmdale, Ontario and so forth.

THE WITNESS: Yes.

THE COURT: The small jets, the alternate is Burbank.

THE WITNESS: That is correct.

THE COURT: Now, rather than going into Los Angeles, where they would like to go, do you ever send them to the alternate open fields of Los Angeles which are used for the big jets?

THE WITNESS: No.

THE COURT: You do not?

[171] **THE WITNESS:** They would make the decision to come to Burbank and abide by it.

THE COURT: All right. Go to Burbank and then back to their former destination or wait until Los Angeles cleared up.

THE WITNESS: That is correct.

THE COURT: All right. Fine.

BY MR. SIEG:

Q Now, you have indicated that this rule was put into effect some time ago.

When was it first placed into effect? This is as to holding a—

A I am just am not certain when that went into effect.

Q When was that?

A I say I am not certain.

Q Oh, you are not?

A No.

Q Was it a year ago?

A No, it was, oh, 15 or 20 years ago.

Q It stayed into effect throughout—

A: It has been in effect since that time.

Q: Up to what point in time, now?

A: The present.

Q: And still continues?

[172] A: Yes.

Q: This is not a rule imposed by the FAA?

A: No.

Q: This is one imposed by you?

A: When you say a rule imposed by us, it is an agreement which was mutually agreed upon between United Air Lines operations and ourselves.

Q: Now, you refer to the Airport and Airways Act of 1970, and you have indicated that you have a certain familiarity with it.

The certification or obtaining certification by you as the airport operator, you must, as I recall the provisions of the Act, do this within two years, is that correct?

A: That is my understanding, yes.

Q: You are under no compulsion, are you, to obtain such a permit?

THE COURT: If you want to operate you do, don't you?

THE WITNESS: We have been advised that we must file for the authorization.

BY MR. SIEG:

Q: What I am indicating is that is only if you wish to continue to service air carriers,—

A: That is correct.

[173] Q: —of the type covered in the Act.

A: Correct.

THE COURT: What type are covered in the Act? If there is going to be an issue on that, what are they, interstate, commercial carriers or intrastate or all commercial carriers?

MR. SIEG: That is why I wanted to bring it up at this point in time.

THE COURT: All right.

MR. SIEG: I think this should be cleared up.

Under the miscellaneous provisions of the Airport and Airways Act there is a section entitled, "Airport Operating Certificate," and if you—maybe it would be well if we either refer to it or read it at this point, your Honor. I don't want to prolong this unnecessarily.

THE COURT: Is it complicated to the extent—does it apply to certain commercial aircraft?

MR. SIEG: Yes.

THE COURT: Well, is it interstate or intrastate or all commercial scheduled flights?

MR. SIEG: It says, "The Administrator"—and this is Section 612(a), "The Administrator is empowered to issue airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board [174] and to establish minimum safety standards for the operations of such airports."

THE COURT: Then that would be interstate.

MR. SIEG: That would be correct, as I would understand it.

THE COURT: All right. Hearing nothing from the plaintiffs, why, we will assume that is it.

MR. SIEG: This section ends with the statement about the two years and it does cover and refer to the areas that will be involved in certification. They are the installation, operation, maintenance of adequate air navigational facilities.

[175] THE COURT: When is the effective date of the Act, 1970?

MR. SIEG: Yes, sir. The amendment was effective May 21, 1970. Does that conform with your understanding?

MR. CHRISTOPHER: I believe that's right.

THE COURT: May 21st. All right.

MR. SIEG: Reference has been made several times in the briefs to the public law number or the statute number.

THE COURT: All right.

MR. SIEG: I believe that's all I have at this time, your Honor.

THE COURT: Any redirect?

MR. SIEG: I have just one. I am sorry.

THE COURT: Yes.

BY MR. SIEG:

Q Mr. Simmons, did you at the request of the City of Burbank prepare a list of those situations which you deemed would constitute an emergency under the provisions of the ordinance involved here?

A That is correct.

MR. SIEG: Please excuse me just a moment, your Honor. I should have had this available, but I wasn't sure of which witness—I have a document here that I [176] would appreciate having marked for identification at this time, your Honor.

THE COURT: All right.

THE CLERK: Defendants' Exhibit A for identification.

(The exhibit referred to was marked Defendants' Exhibit A for identification.)

THE COURT: What is this, please?

MR. SIEG: It is entitled "Emergency Conditions Justifying a Jet Departure During Curfew Hours."

THE COURT: All right. Dated?

MR. SIEG: No date, your Honor.

THE COURT: For identification.

MR. PACKARD: Are you offering it?

MR. SIEG: Not yet.

MR. PACKARD: All right.

THE COURT: Is this something prepared by Mr. Simmons, is that what you are saying?

MR. SIEG: I believe so, your Honor, yes.

THE WITNESS: Your Honor, prepared at my direction.

THE COURT: I see. All right. You are offering it in evidence?

MR. SIEG: Not yet. I would like to have Mr. Simmons look at it first, because I could be possibly [177] in error on what I am asking. Is that agreeable to your Honor?

THE COURT: Yes.

MR. SIEG: May I approach the witness?

THE COURT: Surely.

BY MR. SIEG:

Q I show you Defendants' Exhibit A for identification and ask you if you recognize the particular document?

A Yes.

Q Was that prepared under your direction?

A That is correct.

Q And submitted to the City of Burbank?

A Yes.

Q Are you presently operating under those particular emergency conditions?

A That is correct.

MR. SIEG: I would at this time offer Defendants' Exhibit A for identification in evidence.

MR. PACKARD: Well, your Honor, I have no objection with the exception that I want it understood that these emergencies as set forth are not part of the ordinance per se.

THE COURT: No. The ordinance refers to emergency flights.

[178] **MR. PACKARD:** It doesn't set forth what emergencies are. This is just what they have—

THE COURT: It refers to emergency conditions, the ordinance does. Evidently through Mr. Simmons, following his instructions, why, emergency conditions have been set up while they are operating here under the conditions at this time, as I understand it.

MR. PACKARD: All right. But I just want it understood that this exhibit, which is being offered, is not part of the ordinance itself.

THE COURT: No. As I understand it was prepared—he said it was prepared under his instructions pursuant to the ordinance because of the emergency provisions set forth in the ordinance. Is that right?

THE WITNESS: That is correct, your Honor.

THE COURT: Yes.

MR. CHRISTOPHER: Your Honor, may I be heard for a moment on this subject also?

THE COURT: Well, if you have an objection to it.

MR. CHRISTOPHER: I do have an objection to it, your Honor.

THE COURT: All right.

MR. CHRISTOPHER: It seems to me that the receipt of this evidence will confuse the record in this case [179] because the so-called list of emergencies are only an informal arrangement which is subject to being set aside at any time by the City of Burbank.

The emergencies are administered by the City Attorney's office and the City's Police Department. To have the list of emergencies in the record suggests that the ordinance is modified to that extent, which I think would be a confusing impression.

When the City Attorney, Mr. Gorlick, returned this list of emergency conditions to Mr. Simmons that I am now—and I am now referring to the letter of May 1, 1970, from Mr. Gorlick to Mr. Simmons—he indicated that these conditions could be used for the time being. He went on to say that if there are any modifications "You will be notified," thus making it clear that the discretion and power with respect to these list of emergencies is retained by the City of Burbank and specifically by the City Attorney and by the City's Police Department.

THE COURT: Yes. There probably will be matters that get into evidence here that ultimately will be determined are not material. But it is very difficult to tell at this time.

I am going to let it in. Although I understand what the list is for and how it was obtained. If you want to submit your letter as explanatory to the position of the [180] Police Department, I am sure it will get favorable consideration.

A is ordered in evidence.

(The exhibit previously marked Defendants' Exhibit A was received in evidence.)

MR. SIEG: Just to clear that point, I am not unwilling—in fact I think it should be—the letter should go in evidence with this document.

THE COURT: Is that agreeable, Mr. Christopher?

MR. CHRISTOPHER: Yes.

MR. PACKARD: Yes.

MR. SIEG: Shall we make it part of the same exhibit, your Honor?

THE COURT: Make it part of the same exhibit, yes. A. That's the letter dated—

MR. SIEG: May 1, 1970, directed to Mr. David M. Simmons by Samuel Gorlick, City Attorney, City of Burbank.

THE COURT: All right. A-1.

(The exhibit referred to was marked Defendants' Exhibit A-1 was received in evidence.)

MR. SIEG: I would like to ask, in view of the comment, Mr. Simmons one last question.

Q Up to the present time, Mr. Simmons, has the City of Burbank abided by the emergency conditions which you requested?

[181] A To my knowledge, they have.

MR. SIEG: Thank you.

MR. CHRISTOPHER: Your Honor, I have a few questions on redirect.

THE COURT: All right.

REDIRECT EXAMINATION
BY MR. CHRISTOPHER:

Q Mr. Simmons, you described an understanding between the airport and United Air Lines with respect to the time of takeoff of aircraft which use your airport for alternate landings during weather problems at LAX.

Now, you said in your testimony that that was not a rule but was an understanding between yourself and United. Is that understanding still in effect?

A That is correct.

Q Would you tell me what the reasons are for the existence of that understanding between United and the airport that planes will not take off—or that United

Air Lines planes will not take off until after 7:00 a.m. when they use Hollywood-Burbank Airport as an alternate?

A Basically it was because of the large number of aircraft that United had that would land at the airport during an alternate field operation. And quite frankly during those hours we had no warning with respect to getting personnel to the field, to adequately handle the movement of [182] aircraft on and around the airport.

We discussed the problem, just the sheer numbers of aircraft and the security and maintenance problem that confronted us. We mutually agreed that by, in effect, stabilizing the aircraft when they landed so that we weren't confronted with landings and takeoffs at least we cut our workload down to what we hoped would be a manageable point until additional personnel could be called in.

[183] Q Mr. Simmons, you indicated that three other air carriers used Hollywood-Burbank Airport as an alternate. The air carriers you indicated, as I recall, were Air West, PSA, and Western. Do you have a comparable understanding with Western?

A No, we do not. We have never had, really, a large alternate field operation in terms of sheer numbers of aircraft with either of those other carriers.

Q Do you have a comparable understanding with Air West?

A No.

Q Do you have a comparable understanding with PSA?

A No, we do not.

Q You indicated that Continental Airlines may soon commence to use Hollywood-Burbank Airport as an alternate, having commenced regular services there.

Do you have a comparable understanding with Continental?

A We do not.

Q In the course of your testimony, Mr. Simmons, you indicated that the preferential runway at Hollywood-Burbank Airport is Runway 15. You gave reasons for that being the preferential runway.

In that connection I would like to hand you a portion of Exhibit No. 30, which is a portion marked [184] Burbank 7100.5B, and which is the FAA Noise Abatement Order. I would like to call your attention to subparagraph C of paragraph 5 and ask you to read that paragraph for the court.

THE COURT: What page was it?

MR. CHRISTOPHER: On the second page, your Honor.

THE WITNESS: Page 2?

THE COURT: Yes. Subparagraph C.

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: What is that, 5?

MR. CHRISTOPHER: 7100.5B. It is subparagraph C of paragraph 5. If you look on the first page you will see it is paragraph 5, your Honor, I believe.

THE COURT: Very well. That isn't the one I have here. This is 7100.5B. It is supposed to be in here and it is 7100.3. Is there some confusion here?

MR. CHRISTOPHER: In that exhibit we put not only the current noise abatement order but the three preceding.

THE COURT: I see. Several of them in it?

MR. CHRISTOPHER: Yes.

THE COURT: All right. Go ahead.

THE WITNESS: "C. Traffic and weather permitting use Runway 25 for departures of turbine-pow-

and [185] aircraft as much as possible during the period from approximately 2300 to 0700 local time when people are asleep (residential area is less dense and farther from end of runway west of 25 than south of 15.)"

BY MR. CHRISTOPHER:

Q Does that indicate to you, Mr. Simmons, that Runway 25 is a preferential runway during the hours mentioned?

A That is correct.

Q Can you explain how that particular noise abatement order would be followed at Hollywood-Burbank Airport?

A It would be followed by tower direction as advice to the departing pilots.

MR. CHRISTOPHER: Your Honor, have you found the correct document?

THE COURT: I have it here. But it talks about arrivals. 5B, is it?

MR. CHRISTOPHER: 5C, your Honor.

THE COURT: Oh. "Traffic and weather permitting..." I see. Yes. Departure. Yes.

BY MR. CHRISTOPHER:

Q Now, having had your attention called to this document, Mr. Simmons, do you wish to qualify or explain your testimony with respect to Runway 15 being the [186] preferential runway at Hollywood-Burbank Airport?

A Yes. I would qualify my previous testimony to the extent that during certain hours of the day for the takeoff of turbine-powered aircraft—and I would term this to be pure jet—that the preferential runway is Runway 25 for takeoff.

Q Perhaps more accurately, Mr. Simmons, during certain hours of the night?

A Certain hours of the night.

Q What city do planes fly over when they take off on Runway 25 as a preferential runway during those hours of the night?

A Takeoff west on 25, they would be immediately over the City of Los Angeles.

Q And not over the City of Burbank?

A And not over the City of Burbank.

MR. CHRISTOPHER: I have nothing more.

THE COURT: All right. Anything further?

MR. PACKARD: No further questions, your Honor.

THE COURT: All right. Thank you, Mr. Simmons. You may step down, sir.

(Witness excused.)

THE COURT: Next witness.

MR. CHRISTOPHER: Your Honor, there has [187] conversation concerning Exhibit No. 54, the affidavit of Richard S. Shreve, and I hope I am correctly reflecting the situation when I say that I understand Mr. Sieg has no objection to the receipt of that exhibit into evidence, with the understanding that the plaintiffs will stipulate and intervening plaintiff will stipulate, and we do so stipulate, that there is no airmail presently carried to or from Hollywood-Burbank Airport.

Is that our understanding, Mr. Sieg?

MR. SIEG: Yes, it is.

THE COURT: All right.

4 is ordered in evidence, with that understanding.

MR. CHRISTOPHER: 54, your Honor.

MR. SIEG: I understood there was a group of other documents that went in with this.

THE COURT: 54, yes. 54 is the one about the mail that you discussed at noon.

MR. CHRISTOPHER: Yes, your Honor. The one showing the 48 percent of the airmail at those four airports moved during—

THE COURT: I have a notation Mr. Sieg was going to examine 4, too. But we cleared that up before?

MR. SIEG: Yes.

MR. CHRISTOPHER: Yes.

[188] THE COURT: Yes.

MR. SIEG: Was there nothing more with this?

All right. No objection to 54, your Honor.

THE COURT: With the understanding that there was no mail out of Hollywood-Burbank.

MR. CHRISTOPHER: Yes, your Honor. In or out of Burbank.

THE COURT: All right.

MR. PACKARD: I think 4, your Honor, has been admitted, has it not?

THE COURT: Yes, it has been admitted.

Very well.

(Plaintiffs' Exhibit 54 for identification was received in evidence.)

MR. CHRISTOPHER: Your Honor, I would like to call Ben L. Freiman.

BENJAMIN LEON FREIMAN,
called as a witness on behalf of the intervening plaintiff, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Please state your name, please.

THE WITNESS: Benjamin Leon Freiman.

[189] DIRECT EXAMINATION
BY MR. CHRISTOPHER:

Q Please spell your last name.

A Freiman, F-r-e-i-m-a-n.

Q What is your present residence address, Mr. Freiman?

A 39756 Country Club Drive, Palmdale, California.

Q Would you indicate what your present occupation and position is?

A Yes. I am Chief of the Los Angeles Air Traffic Control Center at Palmdale, California, Federal Aviation Administration.

Q Would you tell the court briefly, Mr. Freiman, what your past positions in aviation have been, how you got started in aviation and a quick sketch of your career in aviation?

A Yes. I originally got started back in the mid-30s in flying at Seattle, Washington. Subsequent time in the Navy as an air traffic controller and working for the predecessor of FAA, CAA. In 1945 at Yakima, Washington, I was a controller. Seattle, Washington, as a controller, and in Honolulu, Hawaii, as an air traffic controller.

And back to Seattle in 1947. Remained there until 1957. Was assigned to the Larson Air Force Base, Washington, as an FAA resident inspector. Then moved [190] on to the Los Angeles Regional Office in the Procedures Branch. Stayed there for approximately four years. Then to the Los Angeles Center in 1964 for one year as Assistant Chief.

Returned to the Regional Headquarters in Los Angeles for two years and four months until reassignment at the Los Angeles Center in January of '68 and my present position.

Q Taking just the last two positions, you referred to your position at the Regional Headquarters. Is that the Regional Headquarters of the Federal Aviation Agency here in Los Angeles?

A Yes, for the Western Region.

Q What, again, was your position there, Mr. Freiman?

A I was Chief of the Procedures Branch.

Q Would you tell us briefly what the scope of your responsibilities there was?

A Yes. That was actually the Airspace and Procedures Branch. We had the responsibility of working with our facilities in the Western Region, other regions in Washington Headquarters in the development of procedures regarding air traffic control for the nine Western States.

[191] Q Now, as head of the Los Angeles Air Traffic Control Center at Palmdale would you describe the scope of your present responsibilities?

A Yes. I have the responsibility for the management of the operations and the personnel of that facility administratively. We have approximately 550 personnel on board at that facility at this time.

Q How many aircraft do you handle through the Center each day?

A 3,000, approximately 3,000 per day.

Q What is the geographical scope of your responsibility?

A We are bounded on the south by the United States-Mexican Border, east by the Colorado River, north by mid-California, and approximately 150 miles outward. It covers 184,000 square miles, approximately.

Q Generally speaking, Mr. Freiman, what are the goals of the Los Angeles Center and you as its head?

A The goals of the Los Angeles Center and myself, as well as the total Agency, are for the safe and expeditious handling of aircraft and to insure good use of the navigable airspace.

Q You have referred to one of the goals as being the safe handling of aircraft. Would you comment further on how you effectuate that goal at the L.A. Center?

[192] A Yes, we strive, of course, to—for the safety of flight, and we do this through the development of procedures throughout the entire system and within the Los Angeles Center's area.

Q The other word you used in describing your goals was the expeditious handling of aircraft. Would you describe how you work at the Center in trying to achieve those goals?

A Yes, we try to make the maximum utilization of the airspace available, to provide the expeditious movement of the aircraft. In other words, not waste any airspace, not to delay aircraft.

Q Will you describe the relationship between the Los Angeles Center at Palmdale which you head, Mr. Freiman, and the Air Traffic Control Tower at the Hollywood-Burbank Airport?

A Yes. The Los Angeles Center, as all traffic control centers throughout the United States, has the total responsibility for the control of the airspace. In the case of terminal locations, such as Burbank, we subdelegate airspace, define it geographically and also vertically, and by agreement between the two facilities we make the best use of the airspace.

Q Is there a subdelegation from your L. A. Center at Palmdale to the Hollywood-Burbank tower?

[193] A Yes, there is.

Q Now, Mr. Freiman, exhibits in evidence here, Exhibits 18, 19, and 22, indicate that scheduled jet passenger aircraft must follow instrument flight rules when they travel to and from Hollywood-Burbank Airport.

Are you familiar with that requirement?

A Yes, I am.

Q In view of that requirement I would like to ask you to describe to the court step by step a typical IFR or instrument flight rule flight from, let's say, Hollywood-Burbank Airport to San Francisco International Airport, from the standpoint of your role and from the standpoint of the air traffic control.

Take it step by step through, if you will.

A Fine. Initially the pilot must file a flight plan, and as the previous witness stated, some of these flight plans can be filed as much as 30 days in advance, with air carrier aircraft, since they fly the same routes and altitudes normally every day.

Once a flight plan has been filed with the Los Angeles Air Traffic Control Center the information is inserted in our computer, providing the information provided to us by the pilot.

Q That is your computer at Palmdale?

A Yes. The information, whether it be stored [194] 30 days in advance or 30 minutes in advance, once it is in the computer the end result is the same. The computer searches the tapes for flights that are due off every 15 minutes.

Once the computer finds a particular flight ready for departure within this time frame, the computer provides a strip to the Hollywood-Burbank Tower, and likewise an identical slip flight progressed up to the appropriate sectors within the Center.

Once that has been accomplished the aircraft merely has to advise the Hollywood-Burbank Tower that he is ready for his instrument flight rule clearance.

Q At what point would he do that, Mr. Freiman?

A At what point would the pilot do this?

Q Yes.

A After he was ready to go and he had his engine started.

[195] Q Passengers on board?

A Passengers on board, and he would then call the Hollywood-Burbank Tower for his instrument flight rule clearance.

Q Would he ask at that point permission to taxi as well?

A Yes. The first thing he would get would be the instrument flight rule clearance read to him, and then after he acknowledged that he would subsequently be given taxi instructions.

He can get that one of two ways. He can tune to a particular frequency called ATIS, called Airport Traffic Information Service, which is continually played on a tape so that the pilot can hear this and not have to block the tower frequency. If he doesn't have that capability, he then asks for that information. If he does have it he merely says, "Hollywood-Burbank Tower. Particular aircraft ready to taxi. Have echo" or "Bravo," whichever the case may be, indicating he has the taxi information. If he has done it in this manner he is then merely cleared to the runway. If not, he is given the wind information and the time and the altimeter that was previously given on a tape.

Q What does he do next or what does air traffic control do next?

[196] A Well, the tower portion would be to provide the aircraft taxi to the appropriate runway for takeoff.

Once the pilot requested clearance for takeoff, and was so given his clearance, he would remain on the control tower frequency until he crossed the boundary of the airport, at which time he would go to the departure control frequency which is located just below the tower.

Q At Hollywood-Burbank?

A At Hollywood-Burbank. And they would control the aircraft, provide separation from other aircraft until such time as he is ready to leave the airspace we had subdelegated and enter our own airspace.

Q You say he would control the aircraft and provide separation. Would you spell that out for us in terms more understandable to us laymen?

A Yes. Basically to take an aircraft from Hollywood-Burbank to San Francisco, as an example, the aircraft would have either filed a standard instrument departure or could have received one, which would indicate routing that would be in the format of a chart that he has to get to a certain point at certain altitudes. He follows these routings.

Once he obtains the headings and the altitudes specified in these standards of departure the tower merely observes the aircraft in the radar, giving traffic information [197] and altering his route if it becomes necessary.

Q What happens next in this trip from Burbank to San Francisco?

A As he prepares to depart the airspace subdelegated to the Burbank—out of the Burbank tower the controller at that facility would call the controller in

our facility and identify the aircraft to us on radar. We would acknowledge the identification to the tower controller at Burbank. He would then have that aircraft changed to our frequency and we would assume control as he proceeded toward San Francisco.

About Paso Robles, California, is the dividing line between the Oakland air route traffic control center and the Los Angeles air route traffic control center, and we will use the same procedure in handing the aircraft off to the Oakland Center.

Q Then at what point would the Oakland Center relinquish control to a subsequent tower?

A As he approached the airspace that the Oakland Center would have subdelegated to the San Francisco tower, as an example.

Q So on every portion of this IFR trip from Burbank to San Francisco the airplane is under and the pilot is under explicit instructions from either a tower or your Center?

[198] A That is correct.

Q In your experience, or from your experience, both at the regional headquarters and at the Center in Palmdale, which you had, Mr. Freiman, how would you describe the air traffic situation in the Los Angeles Basin with respect to congestion?

A It is quite congested.

Q What are the hours in which the congestion is the greatest?

A Well, there are peaks and valleys in the hours, but the major congestion occurs between 6:00 p.m., approximately, and 9:30 p.m. local time.

Q When you described as being quite congested, what does that mean to you as an experienced controller in the Los Angeles Center?

A Well, we are making use of all available airspace at that particular time.

Q What airport in this region is the most congested?

A Los Angeles International.

Q Can you describe the steps that you and your controller colleagues have taken in an attempt to reduce congestion in this area?

A Yes, we are constantly working with the terminal facilities to improve our procedures, by modifying [199] existing procedures, coming up with new procedures and working with the terminals very closely with the ever changing traffic picture.

Q There are documents in evidence and there has been reference here, Mr. Freiman, to the concept of flow control.

Would you describe to the court the concept of flow control as you understand it and as you employ it?

A Well, basically, flow control is a method or a means of metering traffic for any given condition. That is the primary purpose, whether it be weather at one location or a problem at an airport or just too many airplanes. It is a means of metering traffic.

Q You use the word "metering." Would you define that for us and tell us what it encompasses?

A We have several methods in which we can employ that procedure. One is to hold the aircraft on the ground and provide a time spacing that is greater than normal.

We can hold aircraft on the ground and increase the mileage interval between aircraft greater than normal; or we can require aircraft to utilize different procedures or go to higher or different altitudes.

Q Do you have flow control specialists who are on duty regularly at the Los Angeles Center?

A Yes, sir, we have a staff of four.

[200] Q How do they operate in their jobs, Mr. Freiman?

A We have a position of operation within the facility that is constantly alert as to weather conditions, both within our own area and adjacent areas, and any problem that may occur at an airport.

It is their responsibility to insure that the system does not become saturated and also to insure that airspace is not wasted, that the airspace is used properly.

Q Would you give us an example of how this concept of flow control might be employed with respect to Hollywood-Burbank Airport?

A Well, as an example, we could have the weather situation in San Francisco which would curtail the numbers of flights that could be received at San Francisco, or any other given airport, which would require us to place a restriction on airplanes departing Burbank.

Q Within the concept of flow control, as you have explained it, then that restriction might be to hold the aircraft on the ground, tell them they couldn't take off, or provide a greater spacing or interval or both?

A Both or also an alternate routing, if necessary, if one was available.

[201] Q So there are really three possibilities: You can give an alternate routing, you could increase the interval or hold the aircraft on the ground for a given period of time?

A That is correct. Or provide an altitude different than what the pilot requested.

Q We had also a reference here today, Mr. Freiman—I am not sure you were in the courtroom at the time it came up—to the concept of centralized flow control, which the documents indicate was put in only this year.

Would you explain to the court what centralized flow control system is, how it relates to the older concept of flow control?

A Yes. Central Flow Control is under the Systems Command Division located in our Washington office.

THE COURT: You are using the word "flow" now rather than "full"?

THE WITNESS: Flow, f-l-o-w.

THE COURT: Yes.

THE WITNESS: We established—I shouldn't say "we"—the FAA established this position quite some time ago to assist the various air route traffic control centers in determining routes or providing alternate routes or providing alternate means of getting [202] aircraft into certain areas under certain conditions.

A good example would be during the summertime, Eastern California, Colorado, and places like that where the thunderstorm activity is quite intense, airplanes obviously want to follow the route that takes them away from this type of activity. In so doing it sometimes saturates a given route, provides too many airplanes, or would provide too many airplanes or more airplanes than the system could really accept without causing delays to the aircraft.

So, therefore, Central Flow Control in Washington is contacted by the various facilities and they help us provide alternate routes or alternate means of spacing the aircraft or rerouting the aircraft on a national basis.

BY MR. CHRISTOPHER:

Q Would it be your responsibility to consult with Centralized Flow Control before imposing flow control here within your region?

A Yes, it would.

Q What is the mechanism for doing that?

A The flow controller has this function at his position of operation. Should the necessity arise for us to impose flow control restrictions to San Francisco, that would actually originate out of the Oakland Air Route Traffic [203] Control Center rather than out of our center, because they are imposing the restriction on us. But should we impose one in reverse, then it would be our obligation to go to the Central Flow Control Facility and obtain their concurrence, or at least brief them on what we are doing and why we were doing it.

THE COURT: In other words, you would impose a flow control restriction as to planes coming into your area?

THE WITNESS: Yes, your Honor.

THE COURT: And San Francisco, for example, would impose them for planes coming into the San Francisco from this area?

THE WITNESS: Normally, your Honor.

THE COURT: Or other areas?

THE WITNESS: Yes.

THE COURT: I see.

BY MR. CHRISTOPHER:

Q What function, Mr. Freiman, to extend that thought, would the local airport tower play with respect to flow control? Would the local airport tower contact you or contact the Center if they found themselves in a position of overload?

A Yes. If they would believe they were going to have delays in a period of 30 minutes or more it would be [204] the responsibility of that particular terminal facility or tower, if you will, to contact us and tell us why and what the anticipated delay would be so that we could in turn develop flow control procedures to match that requirement.

Q Would you adapt that particular answer to the for-instance you gave us of a plane going from Burbank

to Oakland and suppose there was congestion at one of the San Francisco airports?

A San Francisco would advise—or, rather, the Oakland Air Route Traffic Control Center would advise us that for aircraft Los Angeles-San Francisco they would like to have 30 miles in trail, and by that I mean they want the airplanes no closer than 30 miles, or any other given distance. Or they would ask for a time spacing of 15 minutes between aircraft. We would in turn impose that, of course, on the Burbank-Hollywood Tower.

Q The result of that might be holding aircraft on the ground at Hollywood-Burbank for a period of time so the spacing could be achieved?

A Very definitely.

Q In your various positions here in the Los Angeles area in the Regional Office and now as head of the Center, have you had experience with the noise abatement problems and noise abatement procedures?

[205] A Yes, sir; I have.

Q Have you had a recent experience in connection with Los Angeles International Airport?

A Yes, sir.

Q Would you tell us about it, please?

A I think it was approximately three or four months ago we developed procedures applicable to the departing aircraft at Los Angeles International Airport to provide a routing that would clear certain areas during specific hours.

Basically, prior to the hour of 2300 or 11:00 p.m. local at night and 7:00 a.m. local in the morning we have two procedures that we use primarily for aircraft that are proceeding either north and east, purely east-bound or southbound.

97 percent of the departures at Los Angeles occur to the west.

THE COURT: To the what?

THE WITNESS: West.

THE COURT: West.

THE WITNESS: The aircraft proceeding in the general area of Chicago, as an example, or Denver, normally make a right turn and proceed out over Santa Monica and up through the pass around Palmdale, a little south of Palmdale, and then on east.

[206] Aircraft going to the southeastern part of the United States normally make a left turn, go over Long Beach and proceed eastbound.

BY MR. CHRISTOPHER:

Q What problem was it that you were specifically dealing with, Mr. Freiman?

A To avoid these particular areas during hours of 2300 or 11:00 p.m. local time to 7:00 local time and to find a procedure which would then take the aircraft on a pass that would reduce the noise in the area during those hours.

Q And what procedure did you adopt or adapt for this purpose?

A We developed a procedure that all aircraft departing to the west between those hours would proceed on a heading of approximately 250 degrees until reaching approximately 10,000 to 13,000 feet, then make only a left turn, coming back over the shoreline and then back on the normal routing after that point.

Q Thus the plane would go out over the San Pedro Harbor or the water areas there rather than over the center of Los Angeles?

A That is correct. At that point the coastal line is considerably east of where it would be to the north of that.

[207] Q How is this new procedure communicated to pilots of aircraft departing from Los Angeles International Airport?

A For those pilots who advise they have the Standard Instrument Departure we merely assign what we call the Ocean 1 SID, and that is a name and the number 1 indicates it is the first procedure for the particular SID.

THE COURT: What do you mean? What is SID?

THE WITNESS: Standard Instrument Departure, your Honor.

THE COURT: Yes.

BY MR. CHRISTOPHER:

Q You say you assign that. How is that assignment communicated to the pilot?

A In the case of the air carrier flights they normally store the flight plan, as we have mentioned earlier, some 30 days in advance. That is stored in the computer and that is part of the routing in the flight plan which is prefilled by the pilot—by the company for the pilot.

[208] THE COURT: In other words, the pilot knows that and he includes that in his flight plan?

THE WITNESS: Yes, sir.

THE COURT: Yes.

BY MR. CHRISTOPHER:

Q Is there likely to be any communication between the tower and the pilot with respect to following a new procedure?

A If the pilot had filed a flight plan which included the SID, the Ocean 1 SID, there would be no communication except to say to the pilot, "Cleared as filed." He has indicated he would follow that procedure.

If he had not followed that procedure the communication from the tower would be to assign that procedure.

Q The tower would tell him to go out and turn left rather than going out and turning right?

A He would merely assign the SID. If the pilot was aware—if the tower controller was aware the pilot had the SID he would merely assign the SID. If he did not have the SID information, the controller would spell the procedure out to him.

Q Mr. Freiman, I would like to hand you a portion of Exhibit No. 30.

Again, your Honor, this is BUR 7100.5B. This document Mr. Freiman has referred to as an Informal Runway [209] Use Program and FAA Noise Abatement Order to that effect.

Would you tell us the difference between informal noise abatement procedure and a formal noise abatement procedure?

A Well, the informal procedures are used and assigned by the control tower personnel as the need arises.

On a formal procedure the procedures are normally spelled out in a written procedure which makes it mandatory for the pilot to follow those except if he elects not to follow for safety reasons.

Q When an informal procedure has been given to the pilot by the tower what is the effect upon the pilot's clearance or direction?

A That is made a part of his clearance.

Q Or a part of the directions?

A Or a part of his directions.

Q Could you give us an example, looking at paragraph 5C, of how the noise abatement procedure described in paragraph 5C was worked out or used at Hollywood-Burbank Airport?

A Yes. As stated in the paragraph, traffic and weather permitting the aircraft would be assigned Runway 25 for departures of the turbined-powered aircraft between the hours of 2300 to 0700 local.

Q At what point in the communication between the [210] tower and the pilot would such an assignment be made?

A When he would be receiving the instrument flight rule clearance, that would be a part of the clearance.

Q So between those hours the tower would tell the pilot to take off on Runway 25 rather than other runways?

A Yes, sir.

THE COURT: You say he receives a clearance. Do you mean when he is out there waiting for the clearance and his passengers are aboard and he is ready to go, is that when he gets it?

THE WITNESS: Normally he calls for the clearance, your Honor, after the cabin door has been shut and he is assured that everyone is on board. He starts engines about that time and the copilot or first officer would be calling for it.

THE COURT: Before he gets in line they tell him then which runway to use?

THE WITNESS: That is correct, sir.

THE COURT: Then he taxis to the runway?

THE WITNESS: Yes, sir.

BY MR. CHRISTOPHER:

Q One last question for clarification.

The word "clearance" is used frequently by the men who have been in the controller business for some time. Would you define that or explain that to us, Mr. [211] Freiman?

A Yes, sir. Basically a clearance is an instruction to a pilot to do whatever the clearance calls for. Our procedure is to say that ATC clears and then spell out exactly what we want the pilot to do. Those are really instructions, is what they are.

MR. CHRISTOPHER: You may examine.

THE COURT: Cross-examine.

MR. SIEG: No questions, your Honor.

[212] THE COURT: I just have one question. It is probably not too material to the case, but you said the pilot sends in his flight plan.

As I understand it, the flight plan indicates when he is going to arrive, does it?

THE WITNESS: It normally does not indicate when he is going to arrive, your Honor.

THE COURT: It does not?

THE WITNESS: It indicates when he is going to depart.

THE COURT: When he is going to depart. All right. I see.

Then, by your computer you determine whether there is a conflict?

THE WITNESS: No, sir, not at this point. At some later time the computer will do this.

Right now we are merely processing flight plan information with our computer.

THE COURT: I see. You put the information in the computer.

THE WITNESS: Yes, sir.

THE COURT: Then later on, if there is a conflict how is it handled?

THE WITNESS: Again that will come at a later date. The conflict now is handled manually by the controller. [213] He recognizes this.

THE COURT: I see. Thank you.

Anything further?

MR. CHRISTOPHER: Nothing further, your Honor.

THE COURT: All right. Thank you, Mr. Freiman. May Mr. Freiman be excused?

MR. CHRISTOPHER: Yes.

THE COURT: All right.

(Witness excused.)

THE COURT: Your next witness. We will take a few minutes.

MR. DAU: We will call Mr. James Mitchell.

JAMES L. MITCHELL,

called as a witness by the intervening plaintiff, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Will you state your name, please.

THE WITNESS: James L. Mitchell.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DAU:

Q Mr. Mitchell, what is your present residence address?

[214] **A** No. 2 Coach Road, Rolling Hills, California.

Q What is your present position, sir?

A I am staff vice president of corporate planning, Continental Airlines.

Q How long have you been so employed?

A For two years.

Q Prior to that, Mr. Mitchell, could you briefly sketch for us the other positions in the field of aviation that you have held?

A Yes. During World War II I was a flight test observer at Wright Field in Ohio.

Immediately after the war I went to work for Western Airlines in the sales division. Shortly thereafter I became the director of schedules, who sets up the flight schedules, and in 1950 I became director of research, in which position I prepared information for rate cases applied for by Western.

Q Would you tell us, please, what is involved in your area of responsibility now as staff vice president of corporate planning for Continental Airlines?

A Our responsibilities include over-all planning, both short range and long range, running from day to day scheduling to long range equipment programs, purchases of aircraft.

Q What kind of things do what you referred to [215] as day to day scheduling involve?

A Well, that involves the scheduling of aircraft on our various routes. That function is performed within our division.

Q Is Continental presently conducting any operation at Hollywood-Burbank Airport?

A Yes, we are.

Q When did you commence those operations?

A On August 29, 1970.

MR. DAU: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. DAU:

Q Mr. Mitchell, I am placing Plaintiffs' and Intervening Plaintiff's Exhibit 9 in evidence before you, which is the Certificate of Public Convenience and Necessity issued by the CAB to Continental.

Does that certificate spell out what your authority is to operate a route involving the Hollywood-Burbank Airport?

A Yes, it does.

Q Could you refer us to that portion of the certificate that makes that reference, or give that authority?

A The portion of the certificate involving the authority at Burbank is contained on page 3, under Section [216] 17.

Q Is that Section 17 sometimes referred to as a segment?

A Yes, it is.

Q So would your authority to operate at Hollywood-Burbank be pursuant to Segment 17 of Route 297?

A Yes, sir.

Q Is that authority recently granted?

A Yes, the authority was granted on the 12th of May, in accordance with the certificate here.

Q And was that as a result of a particular CAB investigation?

A Yes, it was. That was the result of the Pacific Northwest-Southwest investigation case.

Excuse me. May I correct that?

Q Yes.

A Pacific Northwest-California investigation case.

Q All right. Could you tell us what kind of aircraft Continental is presently flying into the Hollywood-Burbank Airport?

A Yes, we use exclusively Boeing 727-200 aircraft at Burbank.

Q Let me refer you to that portion of Exhibit 42 which contains your announcement of new service, and ask [217] you to identify those flights that Continental presently operates into and out of Hollywood-Burbank Airport.

A In the northbound direction we operate Flights 302, 304, 306 and 308.

And in the southbound direction we operate Flights 301, 303 and 309 through the Hollywood-Burbank Airport.

Q Could you tell us something about the destinations on those flights and where they are going and where they are coming from?

A Well, the flights operate in the south from the satellite airports of Ontario and Burbank through San Jose in the San Francisco Bay area.

THE COURT: This is south to north?

THE WITNESS: Yes, sir. To Portland and Seattle. And in the southbound direction they generally operate in the same manner.

THE COURT: Well, I am not quite clear.

You say they operate, not from Burbank, but from Ontario, northbound?

THE WITNESS: Some of the flights originate in Ontario—

THE COURT: Oh, originate.

THE WITNESS: —and operate through Burbank.

THE COURT: Through Burbank.

[218] THE WITNESS: Yes.

THE COURT: As scheduled here.

THE WITNESS: Yes, as scheduled here.

THE COURT: I see.

THE WITNESS: One flight originates at Burbank. All flights must proceed to Portland and Seattle or must originate in Portland and Seattle.

THE COURT: Maybe this would be a good time to adjourn. We will adjourn until tomorrow morning at 9:30, gentlemen.

(Whereupon, at 4:25 o'clock p.m., Tuesday, September 15, 1970, an adjournment was taken to Wednesday, September 16, 1970, at 9:30 o'clock a.m.)

[222] LOS ANGELES, CALIFORNIA, WEDNESDAY, SEPTEMBER 16, 1970. 9:30 A.M.

THE CLERK: 70-1075, Lockheed Air Terminal v. The City of Burbank; further court trial.

THE COURT: All right, Mr. Dau. You were examining Mr. Mitchell, I believe.

MR. DAU: Yes.

JAMES L. MITCHELL,

called as a witness on behalf of the intervening plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. DAU:

Q Mr. Mitchell, yesterday afternoon when we concluded we were talking about the schedule flown on the new route from the Los Angeles area to Portland and Seattle.

Could you tell us generally what kind of marketing efforts are required to develop a new route such as this?

A Our main problem is to attempt to change the travel habits of the people who are now moving between the Burbank area and Portland and Seattle. We have embarked upon a massive marketing program which includes advertising through all media, television, radio, and newspapers, and [223] sales promotional material being mailed to the various large companies involved.

We have engaged in direct sales campaigns with a number of the general traffic managers in the area in an effort to advise them of our service, convenience of the availability of the service between Burbank and Portland and Seattle.

Q To this point in time since you instituted that service, have you received any indications of passenger demand?

A Yes, we keep records of the advance reservations which are made. These are called booking reports. They are passengers who booked passage for some future date. These bookings are going very well. In fact, we have exceeded our original anticipation.

Q Is that true all along the route, at Hollywood-Burbank, or what is the situation?

A It is true all along the route. We have experienced excellent advance bookings in the Burbank area, in the San Jose area, and, of course, the return bookings in the Portland and Seattle areas. They all look very encouraging.

THE COURT: Where does that flight stop between Hollywood-Burbank and the Northwest, Portland and so on, do they stop at San Jose? Is that the only [224] stop?

THE WITNESS: No, sir, there are several flights.

THE COURT: You stop at various places.

THE WITNESS: Some operate nonstop to Seattle and nonstop to San Jose and then on to Portland and Seattle, and so forth.

BY MR. DAU:

Q Mr. Mitchell, are you familiar with the concept of satellite airports?

A Yes, I am.

Q What is your understanding of that term?

A Well, the term "satellite airport," which we like to refer to as neighborhood airport, is one which applies to an airport serving a community immediately adjacent to a major metropolitan area, which also has a major airport facility.

Q Would you identify for us the satellite airports in the Los Angeles area?

A In the Los Angeles area for interstate commercial air transportation, the airports that are considered to be satellite or neighborhood airports are Long Beach, Santa Ana, Ontario, and Hollywood-Burbank.

Q Are there any other areas that have satellite airports such as we have here in Los Angeles?

[225] A Yes, the best example is San Francisco where Oakland serves as a satellite airport. San Jose Airport also serves as a satellite airport.

There are others. Washington, D. C., is provided with service through two airports. They don't exactly meet my definition, but they are sometimes referred to as satellite airports. Newark, for example, is a satellite airport of New York.

Q Have you had any prior experience with investigating the service potential at satellite airports?

A Yes, I certainly have. During the years I worked for Western Airlines one of the my responsibilities was endeavoring to find new opportunities for air traffic for Western Airlines, and in the course of those studies, why, we studied very carefully the airport service at Oakland, at San Jose, at Burbank and Ontario, Santa Ana, Long Beach and even Van Nuys. Some of these studies eventually caused Western to provide service and Western for a number of years was the only major carrier providing service at such points as Ontario and Oakland and Long Beach.

Q I take it you also investigated service potential — Pacific Northwest in the California investigation of satellite airports.

A Yes, in that CAB proceeding I was working [226] for Continental Airlines at that time, and we investigated the potential traffic available through all the satellite airports I have named and did propose service to all of those satellite airports.

Q Are you aware of any CAB policy with respect to satellite airports?

A Well, for many years the Civil Aeronautics Board merely authorized service to a city, for example, the City of Los Angeles. The carrier then would iden-

tify the airport through which it desired to serve the City of Los Angeles, and by merely filing an airport notice was authorized to serve Los Angeles through that airport.

About ten years ago the Civil Aeronautics Board received from the air carriers, as well as the neighborhood cities involved, applications to provide service directly through the satellite airports. Since that time the Civil Aeronautics Board has changed its policy in many cases, although not in all, and actually identifies the airport to be served rather than the city to be served.

Q Was that policy followed in the Pacific Northwest-California investigation?

A Yes, it was. As a matter of fact, one of the primary issues in that case was the question of added satellite city service between the satellite cities [227] in the State of California and Portland and Seattle.

Q What is the reason behind this CAB policy to provide service at satellites?

A Well, I think there are probably two reasons. The one which probably caused the Board to look at the airport situation more carefully was that of airport congestion and ground congestion surrounding the major airports. This is a way of alleviating congestion at Los Angeles International Airport and at San Francisco International Airport.

The second reason, of course, is that cities the size of Long Beach and the size of Burbank, were it not for the fact they were immediately adjacent to Los Angeles, would be of sufficient size and economic power to justify their own air service. And the service through those neighborhood airports provides a far more convenient service to the populace surrounding the airports.

Q As a result of your experience in investigating the service potential at satellite airports, could you tell us what the advantages of the satellite airports are to passengers using that airport?

A Well, the primary advantage, of course, is that of proximity. Passengers living within the valley area can use the Burbank Airport with about a 10- or 15-minute driving time involved, whereas to Los Angeles [228] International Airport it would be about a 45-minute drive.

The freeways and highways, of course, are more congested. There is also a corollary problem, that being parking facilities and costs, and many times at the satellite airfields, for example, at Long Beach, there is no parking charge and adequate parking space, whereas at Los Angeles International Airport there are some very critical parking problems at certain times.

Q Does the institution of service at satellite airports provide any advantages for passengers who are still using the hubs or international airports?

A It would provide the advantage of alleviating the congestion, both on the surface and in the air surrounding the major metropolitan airports.

Q Do these advantages that you have described generally apply to the Hollywood-Burbank Airport?

A Yes, sir, they certainly do.

Q In connection with the Continental's proposal to the Civil Aeronautics Board in the Pacific Northwest-California investigation, did you rely on any studies that indicated the kind of passenger demand you would find at Hollywood-Burbank Airport?

A Yes, we did. The air traffic at the Hollywood-Burbank Airport is not reported in the Civil Aeronautics Board origin-destination figures for passengers moving to [229] Portland and Seattle.

Q Why is that?

A That is because there isn't any air carriers serving the Hollywood-Burbank Airport and Portland and Seattle. The majority of passengers who reside in the Burbank area drive to Los Angeles International Airport for their journey to Portland and Seattle.

For that reason we had only the traffic pool reported by the Civil Aeronautics Board of traffic in the Los Angeles area as a total bound for Portland and Seattle. We then had to allocate that total traffic pool to determine what proportion of that traffic we might anticipate out of Hollywood-Burbank and Long Beach and the other satellite airports. In order to do that we relied upon a study conducted by a consulting firm of Landrum & Brown, who did in fact survey passengers on arrival and departure at Los Angeles International Airport to determine their local origin within the city. They then plotted those on maps and set up definitions of minor areas, and by using those we were able to determine—for example, they showed that 20 percent of the passengers surveyed resided or were destined to a point closer to the Hollywood-Burbank Airport than to the Los Angeles International Airport. We then applied that 20 percent to the total traffic pool at Los Angeles to gain the total traffic potential [229-A] which we might expect between the Burbank Airport and Portland and Seattle.

[230] Q Now, are any of your flights on the Portland-Seattle route presently in violation of the Burbank curfew ordinance?

A No, they are not.

Q Does that Burbank curfew ordinance presently affect any plans you might have to develop that route?

A Well, at some time as the traffic would build up to a certain level Continental Airlines would anticipate adding another flight to the Pacific Northwest through the Burbank Airport. The normal time period in which that flight would be added would be at about 8:00 p.m. This gives us a spread through the day of morning, noon, evening—or dinnertime flights and after dinner flights.

The curfew at Burbank would restrict our ability to operate a southbound flight out of Seattle at that hour of the day.

Q What is the latest time that you could operate a southbound flight from Seattle as a result of the Burbank curfew ordinance?

A The normal evening flight would operate from Seattle through Portland, San Jose to Burbank and on to either Ontario or be ferried to Los Angeles. A flight of that nature could not depart Seattle any later than 7:00 p.m.

So that the restriction here would restrict us to a 7:00 p.m. or earlier departure at Seattle.

[231] Q Now, you just mentioned the word ferry. Would you explain what you mean by that?

A Yes. Under the terms of our certificate we are not permitted to operate a flight serving Seattle and Portland and serving Los Angeles International Airport. We cannot carry passengers between Los Angeles International Airport and any point on this Segment 17 of our route.

Therefore, the flight, the southbound flight must terminate at either Burbank or Ontario and be ferried without passengers to the Los Angeles International Airport in order that the aircraft can be maintained under our normal maintenance program.

THE COURT: It has to be maintained at Los Angeles Airport and not at the Hollywood-Burbank?

THE WITNESS: Yes, sir. Our maintenance base is Los Angeles International.

THE COURT: I see.

THE WITNESS: And we have no facilities for maintenance at—

THE COURT: Hollywood-Burbank.

THE WITNESS: —Hollywood-Burbank.

BY MR. DAU:

Q Well, do you regard that fact that you can't operate a southbound flight after 1900 from the Portland-Seattle area as a restriction on your certificate of public convenience [232] and necessity issued by the CAB?

A We certainly do. The certificate contains certain restrictions imposed by the Civil Aeronautics Board, none of which involve time of day restrictions.

Q We also must face the fact that we have not only the authority to provide an adequate service, we have the obligation to provide an adequate service to the Hollywood-Burbank airport. A restriction of this nature would be a further restriction in addition to those imposed by the Civil Aeronautics Board on our ability to provide an adequate service not only at Burbank but at several of the other cities involved.

Q Well, what are the current restrictions that the CAB adds on your certificate for the Portland-Seattle to Burbank route?

A There are two restrictions which are contained in the certificate. The first restriction requires that all flights operated pursuant to that authority either originate or terminate in Portland or Seattle. In other words, we may not operate a flight from San Jose to Burbank. It must originate at either Portland or Seattle.

The second restriction is the one that I referred to a minute ago. We may not provide service to the Los Angeles area pursuant to that authority through the Los Angeles International Airport. The service must be provided [233] through one of the satellite airports of Hollywood-Burbank, Ontario, Long Beach or Santa Ana.

Q Now, what would be the effect on the available hours that you have in the day to fly on that route if Portland were also to institute a similar curfew?

A If Portland were to institute a similar curfew we would not be able to operate a flight from Burbank or Ontario northbound to Portland and Seattle after the hours of 7:00 p.m.

This is because it takes that long to get to Portland and depart then from Portland bound for Seattle. Therefore, the last flight of the day must not depart from the Burbank area later than 7:00 p.m.

To put it differently, a curfew in Portland will affect many services to many cities in the nation including Burbank. And the curfew at Burbank will affect many cities to which service is provided in the nation.

Q So if there were a curfew at both ends, one in Portland and one in Burbank, your flight would be restricted from operating between the hours of 7:00 in the morning and 7:00 in the evening; is that right?

A Yes, sir.

Q And that would be on a 11:00 to 7:00 curfew?

A Yes, sir.

Q Now, if there were a nationwide curfew on [234] takeoff—

MR. SIEG: If the answer is 7:00 a.m. to 7:00 p.m. in the evening, I do not believe that was the—

THE COURT: 11:00 to 7:00, you are talking about, aren't you?

MR. SIEG: 7:00 p.m. in the evening to 7:00 a.m. in the morning, I would assume.

MR. PACKARD: Let's have it read back.

THE COURT: What were the hours you were asking about?

MR. DAU: Well, let me put it another way, your Honor.

Q Mr. Mitchell, during what hours of the day would you be restricted from operating aircraft if there were an 11:00 p.m. to 7:00 curfew at Portland and one at Burbank as well?

A Well, we would be precluded from operating any services between the hours of 7:00 p.m. and 7:00 a.m. operating between Seattle and Burbank.

Q To put it another way, you would be allowed to operate only between 7:00 a.m. and 7:00 p.m.; is that right?

A Yes, sir. Our day would be restricted to twelve hours.

THE COURT: If at both ends?

THE WITNESS: At both Portland and Burbank, yes.

[235] **THE COURT:** You would be restricted by six hours—let's see, seven—you are restricted by eight hours with it being at one end. The Burbank restriction.

THE WITNESS: Yes. The Burbank restriction standing alone.

THE COURT: 11:00 to 7:00 is eight hours.

THE WITNESS: Yes, sir.

THE COURT: Yes.

THE WITNESS: But a southbound flight—

THE COURT: I understand. I understand. If it's at both ends it is restricted more hours, twelve hours. All right.

BY MR. DAU:

Q Now, if there were a nationwide curfew on take-off instituted, how many flights under Continental's present schedule would be in violation of that curfew?

A We have 48 departures on our September schedule which would fall within the curfew hours in which we could not operate under that curfew.

Q Is that every day?

A Yes, sir.

Q Could you tell us something about what kind of passenger service Continental provides between the hours of 11:00 p.m. and 7:00 a.m. local time nationwide?

A Well, we operate regular services the same as [236] we would operate in the daytime. However, we have a tariff which permits standby adult passengers to be carried on the late night flights. This is not only true of Continental Airlines but of other air carriers.

Obviously the standby passenger traffic would not be available if we did not have the late night flights or the late night departures.

These are operated pursuant to Board Authority as a result of economic determinations that off-peak flights, flights which operate during off-peak hours can be sustained at a lower level of fares.

Passengers would, therefore, not have available to them the standby adult tariffs.

THE COURT: It varies with the time of day the plane leaves?

THE WITNESS: There is a special fare restricted to late evening operations.

THE COURT: What hours are we talking about when we say late evening?

THE WITNESS: Well, they are shown on the schedules which we filed and on the schedules which are included in the exhibits here. They are identified with the letters KU at the top.

THE COURT: But what hours?

THE WITNESS: Basically between 9:00 p.m. and, [237] oh, about 4:00 in the morning.

THE COURT: All right. Go ahead.

THE WITNESS: Because they are off-peak flights we do carry passengers on a standby basis without reservation at a much lower than normal fare. So that these night flights do carry a large proportion of those passengers.

They also carry military standby traffic in large proportions. During some times of the year under our youth standby tariff, for example, at Christmastime and at times when school is opening or closing, the night flights have many, many youth standby passengers.

BY MR. DAU:

Q: Could you tell us to what extent your mail and freight operations are carried on at night?

A: Well, airmail and air freight generally is accumulated throughout the day, dispatched to the airports, arriving at the airports in the area of 10:00 to 11:00 o'clock at night and carried by the air carriers in the night hours.

So that the large proportion of Continental's airmail and air freight is carried at night.

As a matter of fact, on September 14th we instituted our first all-cargo service using aircraft which carry no passengers but carry cargo and mail during the

[17-A] midnight hours. They are also shown on the aircraft routing diagram which is an exhibit.

(238) Q In scheduling flights is one of your goals maximum aircraft utilization?

A Yes, it is. It is a very important factor in producing an efficient economic service. You must use your facilities to maximum advantage, and therefore we try to fly our aircraft as much as possible and obtain as high a daily average utilization of those aircraft as we possibly can.

Q What kind of daily average utilization does Continental have on its domestic routes?

A On its domestic routes Continental Airlines utilizes its aircraft approximately nine to nine and a half hours, depending upon the time of the year, and in so doing it attains one of the highest utilization rates in the industry.

Q How do you measure that time? When you say nine to nine and a half hours, to what are you referring?

A Those are hours in the air of the aircraft, from the time the wheels leave the runway to the time the wheels touch the runway.

Q That is measured in a 24-hour period, is it?

A Yes, sir.

Q Now, would you describe for us how the scheduling of aircraft is geared to the maintenance operation.

A Well, maintenance is a very complicated subject because each component part of an aircraft, the engines, for example, and each component of the engines, is on a timed maintenance basis and must be returned to the major maintenance base for either inspection or for regular maintenance work.

THE COURT: How often? Any particular time schedule?

THE WITNESS: Every item is on a different time basis, sir, and it is very difficult to explain the maintenance problems simply. The fact of the matter is that we must operate our schedules in such a manner to insure that each aircraft can be called back into the maintenance base every day or at the most every two days.

THE COURT: You have maintenance facilities in the Northwest as well as in Los Angeles?

THE WITNESS: There are certain types of maintenance, a walk-around inspection program, for example, which is—

THE COURT: Not mechanical maintenance.

THE WITNESS: But not really mechanical maintenance. All our mechanical maintenance is at Los Angeles.

THE COURT: All right.

[240] **THE WITNESS:** For the type of aircraft involved in this proceeding.

THE COURT: Yes, the 727's and 737's and DC-9's?

THE WITNESS: That is right. We do some maintenance on some of our DC-9 aircraft in Denver, sir.

THE COURT: I see. They wouldn't be used on this flight.

THE WITNESS: That is right.

MR. DAU: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. DAU:

O Mr. Mitchell, I would like to place Exhibit 51 for identification before you.

Could you tell us what these two pages are referred to?

A. These two pages, which are entitled "Daily Planning Diagram," are copies of Continental Airlines' present aircraft routing diagrams. These show each aircraft, where they go and when, throughout a 24-hour period.

Q Now, one of them is labeled "Boeing" and the other is labeled "DC-9". Will you describe what that indicates?

A Yes. All the aircraft routings on the [241] one which is indicated as Boeing are Boeing type aircraft. On Continental Airlines they are the Boeing 707-300C Boeing 720-B and Boeing 727-200. These aircraft are operated interchangeably over our system and the routing diagram shows all 48 of those aircraft.

The DC-9 routing diagram shows only the DC-9 aircraft in our system.

Q All right, sir. Now, there are certain times indicated in the left-hand and on the extreme right-hand side of the page. Will you tell us what they indicate?

A Yes, this diagram commences at the top of the page, just after midnight at 0001 hours and continues through the 24-hour clock to the bottom of the page at 2400.

Q All right, sir. Now, there are some three-letter designations written across the top of the page and across the bottom of the page. Will you tell us what these stand for?

A Those are standard airline codes for various cities on Continental's system.

THE COURT: There is Ontario, Burbank, San Francisco, Oakland—what is PDX?

THE WITNESS: Portland.

THE COURT: Portland.

[242] BY MR. DAU:

Q And to finish that out, SEA would be Seattle, is that right?

A Yes, sir.

Q And on the left-hand side of the page LAX would refer to Los Angeles International?

A Yes, sir.

THE COURT: And Denver and what is ORD?

THE WITNESS: ORD is Chicago. It is a strange code, but it stands for O'Hare Field.

THE COURT: I see.

BY MR. DAU:

Q Maybe it would be helpful, Mr. Mitchell, for you to identify the main routes shown on the Boeing Exhibit there and tell us what the airport codes stand for on those routes.

A Well, starting at the left—

THE COURT: Are we talking about Boeing now, the Boeing chart?

THE WITNESS: Yes, sir, the Boeing chart.

Starting at the left along the top you will see the codes LAX for Los Angeles, ONT for Ontario, BUR for Burbank, SJC for San Jose, OAK for Oakland, and PDX for Portland, and SEA for Seattle.

Now, this segment of this routing diagram [243] sets forth the aircraft as they are routed up and down the West Coast on our Segment 17 between the Los Angeles area and Seattle.

BY MR. DAU:

Q Now, some of the airports on that segment are shown as a line and two of them, like Los Angeles and Seattle, appear as a wider block. What is the reason for that?

A The reason for that is simply conservation of space on the routing diagram. At LAX we do have aircraft that turn around. We have aircraft on the ground for long periods of time, and therefore we have a block so that a line depicting the aircraft can move inside that line.

At Ontario and Burbank, since in the main aircraft stop there and continue on to some other point, we merely show a vertical line to represent that city. If the aircraft stops there the line depicting the aircraft has a large dot on it so you can see that it stops there. The same is true at Seattle. It is a larger base where we have many aircraft and therefore we have a wide block to permit us to show each aircraft.

Q Now, are all lines shown on the chart in local times?

A Yes, all times are local times, whether they [244] be Daylight Saving or Standard.

Q Would you pick up the line for us which is identified on the Ontario-Seattle route as 302, and start with the first movement in the morning and follow it through the day and describe for us what that line indicates?

A Yes. At the top of the page in the LAX block you will see a line that represents an aircraft. That line then during the hours from 0001 until 0700 remains in the LAX block. This means, of course, the airplane is on the ground at Los Angeles International Airport.

Shortly after 7:00 a.m. you will see that the line continues, is marked FRY, which stands for Ferry and shows a dashed line to the line representing Ontario International Airport. At that point the aircraft goes on the ground again at Ontario for about 30 min-

utes and begins the departure of Continental flight 302. It departs from Ontario at about 8:15. It makes a stop at Burbank, with the black dot indicating that stop at about 9:00 a.m.

It then proceeds northward to Portland, making a stop at Portland shortly after 11:00 a.m. and arrives at its destination, Seattle, at approximately noon. It is identified there again as Flight 302 so it can be easily followed.

[245] The aircraft then remains on the ground for about 45 minutes and departs from Seattle as Continental's Flight 305 at about 12:30. It proceeds to San Jose where it makes a stop shown by the black dot and continues on back to Ontario, arriving at Ontario at about 1530, 3:30 in the afternoon.

[246] The aircraft then remains on the ground at Ontario, being serviced for its departure of Flight 309—excuse me—308. 308 is shown departing at about 1645 from Ontario, making a stop at Burbank, at near 6:00 p.m. continuing to San Jose, making another stop there at about 7:00 p.m.

It proceeds to Portland, making a stop at Portland just before 9:00 p.m. It arrives in Seattle at 9:30 approximately, and remains on the ground in Seattle.

So that aircraft commenced its day's work in Los Angeles, flew a flight to Seattle via various intermediate stops, returned to Ontario and then returned back to Seattle and remains overnight to commence an operation at Seattle in the morning.

Q Where would that aircraft take up the next morning on the diagram?

A The same line that is shown at the bottom of the page in the Seattle block depicting that airplane is found again on the 0001 at the top of the page at Seattle.

That line may be followed in the identical manner as I just described. It remains in Seattle overnight and commences the operation of Flight 301 at Seattle at about 7:30 in the morning.

Q Moving across the page, then, from Seattle, what is the next route flown by Continental?

[247] A The next route to the right there of Seattle block is a route which we operate between Seattle and Portland through Denver into cities in Oklahoma, Texas and on to New Orleans.

New Orleans is shown by the code letters MSY and is approximately in the middle of the page here.

Q Now, between the Seattle abbreviation which you have previously identified as SEA and New Orleans as MSY, what are the other abbreviations that are shown at the top of the page?

A PDX is, again, the code for Portland. DEN is the code for Denver. ICT is Wichita. OKC is Oklahoma City. TUL is Tulsa. IAH is Houston. MYS is New Orleans.

Q Now would you pick up there in New Orleans and identify the abbreviations across the rest of the page there for us?

A Yes. SAT stands for San Antonio. HNL for Honolulu. ITO is Hilo, Hawaii. DAL is Dallas. ELP is El Paso. ABQ is Albuquerque. TUS is Tucson. PHX is Phoenix. SFO is San Francisco. LAX is repeated again here for convenience and represents Los Angeles.

ONT is repeated again because it is served on another route by Continental Airlines. ONT stands for Ontario.

DEN is also repeated as Denver. COS stands [248] for Colorado Springs. MKC stands for Kansas City. ORD stands for O'Hare Field in Chicago.

Q So the route at the right-hand side of the page, then, from LAX to ORD would be your Los Angeles-Chicago route with the various stops indicated along that line?

A Yes, sir.

Q Now, there are a number of dots circled in red at both the top and the bottom of the page on the Boeing diagram as well as on the page with the DC-9 diagram of Exhibit 51. What do the red circles indicate?

A The red circles indicate departures of those particular flights between the hours of 11:00 p.m. and 7:00 a.m.

Q Those are departures that would be in violation of the nationwide 11:00 to 7:00 curfew; is that correct?

A Yes. That's correct.

MR. SIEG: May I interject at this point and on voir dire ask just to understand this, your Honor?

Are you saying, Mr. Mitchell, that between the two red lines, the flights between those lines would be in violation of a curfew ordinance?

THE COURT: The flights above and below. Isn't that what you said?

THE WITNESS: Yes, sir.

THE COURT: That's what he testified to.

[249] MR. SIEG: The record I don't think will show that, your Honor. That's why I interrupted.

THE COURT: Well, he said that the ones circled in red were the ones that were before 7:00 and after 11:00.

THE WITNESS: Yes, sir; that's what I intended to say.

THE COURT: Well, it is cleared up now.

MR. SIEG: Yes.

BY MR. DAU: Those movements that are circled are takeoffs only, is that correct?

A Yes. That's correct.

Q Now, I take it the red line across the page at 7:00 a.m. and the one at 11:00 p.m. is merely to identify the curfew hours?

A Yes.

Q You previously testified, Mr. Mitchell, that the Burbank curfew would prohibit flying southbound from Seattle after 1900. Is that indicated on the exhibit?

A Yes, it is. It is indicated at the bottom of the Seattle block with a—an arrow pointing downward stating no departures after 1900.

Q And what—

A The Burbank curfew would prohibit departures [250] at Seattle after 7:00 p.m.

Q That's a green line; is it?

A Yes, it is.

THE COURT: There is one there that looks like you have circled it and technically it shouldn't have been circled.

THE WITNESS: I should probably explain that. This route diagram is a depiction of where the aircraft go and approximately what time. That particular arrival happens to be before 11:00 p.m. and the departure is after 11:00 p.m.

BY MR. DAU: Would you identify, Mr. Mitchell, which one

you are speaking of now?

A Flight 424. Its arrival at Houston is before 11:00 p.m. Although the line shows a departure slight before 11:00 p.m., it is at 11:00 p.m.

Q Now, what would be the effect of a nationwide curfew on the available hours for your Seattle to New Orleans flight?

A A flight such as Continental's Flight 430 operating from Seattle through Denver, Wichita, Tulsa, Houston to New Orleans could not be operated from Seattle at any time after 2:00 p.m. because if it did its departure time at Houston bound for New Orleans would be in violation of the [251] curfew at Houston.

Q Obviously that flight could not operate before 7:00 a.m. in the morning?

A That is correct.

Q All right. Would you describe for us how you have figured that that flight could not operate after 2:00 p.m. or 1400 in the afternoon?

A If you move the flight time of that flight to the point where its departure at Houston is just prior to 11:00 p.m. thereby making it legal or not in violation of the curfew, it would have to depart from Seattle at 2:00 p.m. It takes that long to get there.

Q All right, sir. What would be the effect on such a nationwide curfew between 11:00 and 7:00 on your flight from Los Angeles to Chicago? What available hours would you have to operate that flight?

A A flight in our normal Los Angeles-Chicago pattern stopping at Denver could not depart any later than 4:15 p.m. from Los Angeles.

Q Nor could it operate before 7:00 a.m. in the morning?

A Nor could it operate before 7:00 a.m. in the morning, correct.

Q Well, why is it that the curfew, an 11:00 to 7:00 nationwide curfew can affect different flights by [252] providing a variety of available hours that you

operate? In other words, why can't you—why is the Seattle to New Orleans restriction from 7:00 am to 1400 in the afternoon whereas from Los Angeles to Chicago it's between 7:00 a.m. and 4:15 in the afternoon?

A Well, all of these vary depending upon the intermediate stops made.

THE COURT: It's the time element all the way through?

THE WITNESS: The time element all the way through the flight, yes.

THE COURT: Which varies with the number of stops you make as far as going from here to Chicago?

THE WITNESS: Yes.

THE COURT: Or from here to Seattle?

THE WITNESS: That's correct. It varies depending upon where you are going, what time zones you cross. Because the time zone gets involved also. I am assuming that the curfew would be local time.

THE COURT: Yes.

THE WITNESS: And, therefore, time zones play a very important part in a nationwide curfew.

So that the time zones, the distances, the direction and the number of intermediate stops involved would all render most flights in the nation having a different [253] operating period of the day in which they could operate. And this is what we have demonstrated here. Depending upon the flight, where it is going and what it is doing it will have a different individual curfew.

BY MR. DAU:

Q Now, if you are crossing time zones, does that have a greater effect than a particular segment like Los Angeles to Seattle where you don't cross time zones?

A Well, it has the effect as you cross the time zone eastbound of adding an hour to your flight time.

Q Thereby restricting by another hour the available hours that you can operate that flight?

A Yes, sir.

THE COURT: The other way would give you more time, so it would balance out?

THE WITNESS: Yes. That is correct.

BY MR. DAU:

Q Now, you have indicated various times. For instance, on the Seattle to New Orleans flight you couldn't operate after 2:00 in the afternoon. Could you actually schedule a flight at 2:00 in the afternoon if there were an 11:00 to 7:00 curfew in Houston?

A Well, we would not schedule a flight at 2:00 in the afternoon. We would probably schedule it at about 1:00, or no later than 1:30 for the reason that we would not [254] want that flight even on an occasional basis to suddenly encounter a curfew at Houston as the result of a weather problem if the flight is delayed or any other type of problem that it may encounter along its way.

We have significant economic penalties when we encounter that kind of a situation and have to overfly, for example, Houston, carry the passengers on to New Orleans and then transport them at our expense by ground or some other means back to Houston. This is a very expensive undertaking.

Q Could that also have an effect on your—say, you were held in Houston, could that have an effect on your maintenance scheduling?

A It could have an effect on the maintenance schedule. It could have an effect on the immediately ensuing schedule of an airplane. If it doesn't get where

is going, it cannot commence the next flight. This thing pyramids through the day.

Q What would be the effect of a nationwide 11:00 to 7:00 curfew on Continental's ability to provide adequate service as those terms are used by the Civil Aeronautics Board in issuing your certificate?

A Well, there are many factors involved in the provision of adequate service. We have the obligation to perform airmail service, freight service and passenger [255] service.

One example in terms of passenger service, for example, is that at the present time with the high degree of oil activity in Alaska and the North Shore there is a substantial movement of traffic between Alaska and the oil centers in Oklahoma and Texas and Louisiana.

[256] There are three daily services between Anchorage and Seattle; one provided by Northwest and one by Alaska Airlines, and the other by Western Airlines, which arrives in Seattle at 11:30 p.m.

We carry significant quantities of passengers moving from Anchorage into the Texas area. On the flight which is shown on this routing diagram, Flight 430, which leaves Seattle at about 1:00 a.m. and operates down into the Oklahoma-Texas area, so that those passengers would be precluded from gaining service at that hour of the day. This is the most used service for Alaska-Texas travel today.

Q And in scheduling flights such as 430, do you take into consideration the connections other airlines provide into the originating city?

A Absolutely. In our domestic system about 30 percent of our business comes as a connection from other carriers. In the case of this particular flight a very high proportion of it comes from Alaska connecting

with these three carriers. It also carries a large amount of airfreight in the oil business between Alaska and Texas—excuse me, that is in the reverse direction, between Texas and Alaska.

Q Now, at my request did you look into the situation and make a study to determine what Continental could do in the event of a nation-wide curfew as the least [257] onerous way to meet that restriction?

A Yes, we undertook a study to determine what we in fact would do, because in scheduling aircraft there are several alternatives available. So we engaged in a study to determine what we really would do if this curfew were imposed nation-wide. This involves cancellation of a number of flights, changes of certain flights to await curfews and so forth.

Q What is the minimum number of flights you would have to cancel under a nation-wide 11:00 to 7:00 curfew?

A We would cancel approximately 15 percent of our aircraft miles flown, which would be in excess of 30,000 miles a day. This would be the minimum.

Q And did you make a list of the minimum number of flights you would have to cancel if you were operating against such curfew?

A Yes, I did.

MR. DAU: May I approach the witness, your Honor?

THE COURT: Yes.

Has this presently an exhibit number?

MR. DAU: Well, it does not at this time, your Honor. We apologize for that. We didn't have it in time.

[258] Q I have handed you a document entitled "Continental Airlines Minimum Cancellation Required by 2300-0700 Nationwide Takeoff Curfew".

Mr. Mitchell, is that the list to which you just referred?

A Yes, it is.

Q How many flights would have to be canceled, according to your list, as a result of this curfew?

A The list indicates 28 flights. I should say that some of these flights are not canceled in their entirety.

Q But the daily aircraft miles that you have indicated there would be canceled each day, is that right?

A Yes. In explanation, if I may, the first flight listed there, Flight 420, operates from Seattle clear down to New Orleans. In attempting to adjust ourselves to this sort of a situation we have tried to mitigate the amount of cancellations. As I said, this is a minimum number of cancellations, and those flights we canceled only between Portland and Seattle, Flights 420 and 429. This, of course, would eliminate some Seattle service. Our service pattern would not be as good as it is and there are many passengers who would have to be inconvenienced. But this is the type of thing we would do in order to keep from having to cancel the entire flight [259] all the way to New Orleans. That is why I say this is a minimum cancellation.

Q All of these cancellations you have listed here are on nighttime or curfew-hour flights?

A No, they are not.

Q Would you explain why that occurs?

A Well, among the cancellations here, for example, are two night flights. They are shown on this

list as Flight 66 and Flight 56, which operate from Los Angeles to Houston. Now, those two flights must be canceled in that direction. In order to balance our aircraft we must cancel a return flight as well. The return flights we have chosen here to cancel are those which would be last onerous to us, and they are indicated with an asterisk showing cancellations which are required in order to get our aircraft back into balance. Otherwise, we would end up in six or seven days with all our airplanes in Houston.

Q That would be Flights 109 and 65?

A Yes, Flight 109 was the balance for Flight 66, and Flight 65 was the balance for Flight 56, and both Flights 109 and 65 operate in the daylight hours.

Q What would be the effect of a nation-wide 11:00 to 7:00 curfew on Continental's freight and air-mail operations?

[260] A Well, since the majority of our—

THE COURT: Didn't you go into this? Didn't you say it was all shipped at night?

THE WITNESS: Yes, sir.

THE COURT: He has testified to that, hasn't he?

MR. DAU: Well, he testified generally that most of that material moves at night, your Honor. We haven't gotten into specifically down to the effect on the airlines of the cancellation list he has prepared here.

THE COURT: It certainly would include any of those planes, wouldn't it?

THE WITNESS: Yes, sir.

THE COURT: You want to ask him how many there are? Is that what you are getting to or leading to, or what? I don't want to repeat, now. I don't want to start over again on the portions he has covered.

MR. DAU: Yes, your Honor.

Q What percentage, Mr. Mitchell, of your cargo flights, for instance, would you lose as a result of the cancellation list you prepared?

A Well, all of our flights carry both passengers and cargo, with the exception of the new cargo flights originating on September 14th, so the percentage would be the same. The percentage of miles would be 14.9 percent. [261] But it would be at the time of day when the vast majority of the cargo airfreight and air-mail by Continental Airlines is carried.

Q Did you attempt to compute the percentage of increase in your operating costs that you would incur if you were facing a nation-wide 11:00 to 7:00 curfew?

A We would expect our operating costs to increase in the neighborhood of 25 percent, if we were to be faced with a nation-wide curfew of this sort.

Q What are the major factors that would cause this increase?

A Well, the biggest single factor is inefficiency. We are able to utilize our capacity at night when it is otherwise standing idle in flying a good many of these services. In order to replace those services during daylight hours we would have to purchase approximately six new Boeing aircraft at a cost ranging between five and seven million dollars each. These costs then would have to be borne by the daylight operations. Our efficiency would go down considerably, our aircraft utilization would go down and our personnel utilization would go down.

[262] In addition we would lose substantial quantities of aircraft revenues which are in the main carried at night and would probably not divert to daylight trips.

THE COURT: How many of the type of planes you were discussing, that we are discussing, does Continental have?

THE WITNESS: We have 53 Boeing aircraft, your Honor.

THE COURT: Of this type? Not 707, but of this type, this particular type.

THE WITNESS: Of the Boeing 727-200 we have 19.

THE COURT: That's the 727-200?

THE WITNESS: Yes, sir.

THE COURT: And how many DC-9's?

THE WITNESS: We have 19 DC-9's also.

THE COURT: Then 737?

THE WITNESS: No, we have no 737's.

THE COURT: All right. So that's a total of 38, isn't it? DC-9's and 727's 19?

THE WITNESS: Yes, sir. We have 19 DC-9's. And we 19 Boeing 727-200's. We have eight Boeing 720-B's.

THE COURT: Do you use those on these flights, on these routes?

[263] THE WITNESS: Over the system, but not into Burbank.

THE COURT: Yes, that's what I mean. Not into Burbank. All right. Go ahead.

BY MR. DAU:

Q How about 707's?

A We have 13 707-320's. I should modify that. Five of those aircraft are operated over our Military Air Command services across the Pacific and are not involved in our domestic operation.

Q And 747's?

A We have three Boeing 747's.

Q Has Continental Airlines been operating for the past several years at a rate of return that is considered adequate by the Civil Aeronautics Board?

A No, it has not. Our rate of return is considerably less than half of that which the Board has determined to be appropriate.

Q What would be the effect of the nation-wide 11:00 to 7:00 curfew on passenger fares?

A Well, in my view if all other carriers suffered as severely as we do—or as we think we would to the tune of a 25 percent loss, this type of a loss would be passed on. The only alternative we would have would be to pass that on in the form of fare increases.

[264] Q Resulting in a significant increase, I take it.

A Yes. I would think it would be in the same magnitude.

MR. DAU: At this time, your Honor, we would move the admission of Exhibit 51.

THE COURT: 51 is in evidence. 51 is in evidence.

MR. SIEG: No, it is not.

MR. PACKARD: I don't think so.

THE COURT: I have it marked.

MR. DAU: That's the daily planning diagram. We have not previously offered its admission.

THE COURT: I see. You are right. It is not. I don't have it marked. Do you have it marked, Mr. Byrne?

THE CLERK: Let's see.

THE COURT: I don't have it marked in evidence.

THE CLERK: No, I don't, either. I'm sorry.

THE COURT: 51 is ordered in evidence.

(Plaintiffs' Exhibit 51 for identification was received in evidence.)

MR. DAU: And may the list of minimum cancellations be attached to that exhibit as part of Exhibit [265] 51, your Honor?

THE COURT: Yes, there being no objection. This will be attached now to 51.

MR. DAU: You may cross-examine.

THE COURT: Cross-examine.

I believe now that all of the exhibits 1 to 51 are in evidence.

MR. CHRISTOPHER: 1 to 54.

THE COURT: 1 to 54, yes, 1 to 54 are in evidence, I believe. Is that right, Mr. Clerk?

THE CLERK: Yes, your Honor.

THE COURT: Yes, my notes indicate that.

MR. CHRISTOPHER: Thank you, your Honor. That is our indication, too.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. SIEG:

Q Mr. Mitchell, you have indicated some familiarity with the decision of the Civil Aeronautics Board in connection with the Pacific Northwest-California investigation; is that true?

A Yes. I am generally familiar with it, yes.

Q And you read the decision?

A Yes, I have. At some point recently in May [266] when it was issued I am sure I read it.

Q Yes. I am referring at this time to Exhibit 35 in evidence. I believe that decision awarded to Continental not only Ontario, Burbank, but also Santa Ana and Long Beach, did it not?

A Yes, sir, it did.

Q Now, I note your schedule, the one that was admitted in evidence, shows no stops, either departures or landings, at Santa Ana or Long Beach.

THE COURT: That's Exhibit 51, is it? I want to be sure the record is clear as to what you are talking about.

MR. SIEG: The schedule?

THE COURT: Exhibit 51, is that the one we are talking about?

MR. SIEG: No, sir.

THE COURT: I just want the record clear as to what exhibit is being referred to.

MR. SIEG: The schedule that I have just referred to is Exhibit 42. It is the one-page schedule that shows the routing as described in that schedule, Burbank, Ontario, San Jose, Portland, and Seattle.

THE COURT: Do you need it to examine it?

THE WITNESS: No, sir.

THE COURT: All right. The question is, [267] now, that doesn't include the stop at Santa Ana and Long Beach; is that correct?

MR. SIEG: That is right, your Honor.

THE WITNESS: That is correct, it does not.

BY MR. SIEG:

Q Now, why have you not implemented service at Santa Ana and Long Beach in accordance with the permission granted by the Civil Aeronautics Board?

A The primary reason, sir, is that the Santa Ana Airport has a 95,000-pound weight restriction on its runways. As a result we are precluded from operating our Boeing 727's there.

Q Any other reason?

A Well, that, sir, is reason enough. We cannot operate there until that restriction is lifted.

Q All right.

A If it is lifted.

Q That's the only reason, then?

A Yes, we cannot operate our aircraft there.

THE COURT: What he is trying to find out is if you could operate there would you? Is there any other reason you wouldn't other than the fact of the weight restriction on your aircraft?

THE WITNESS: We have indicated a desire to operate there and wish to provide the service. We have [268] indicated that we are ready to provide the service. The matter of the restriction will have to be cleared up before we can operate there. At such time as it is, assuming that all other factors are clear also, why, we will be operating there.

MR. SIEG: All right.

Q What about Long Beach?

A Long Beach will be a stop on the Santa Ana service pattern in accordance with our proposed service.

Q Well, my question is why haven't you instituted service there?

A We have encountered some difficulties in getting authority to operate aircraft at Long Beach.

Q Would you be more explicit, Mr. Mitchell? What is the problem?

A Well, the problem is a political one, I would judge, within the City of Long Beach. In other words, the airport has no restrictions or no technical reasons why we could not.

Q In other words, your aircraft could land and take off there, the 727's?

A Yes, sir.

THE COURT: Who has to give you the authority that has not given it to you?

THE WITNESS: Well, we have, of course, to [269] negotiate leases for ticket offices and for other facilities at the airport and these things are in the process of negotiation, but they are being slowed down considerably.

THE COURT: Yes.

THE WITNESS: We are prepared to operate and we are desirous of operating there.

BY MR. SIEG:

Q But you haven't as yet overcome this opposition; is that true?

A No, we haven't. It hasn't anything to do with a crew, however.

Q No, I realize that. But you haven't succeeded in persuading the local authorities at Long Beach to accept your aircraft; isn't that true?

A That is true. We would not want to commence an operation which was not desired by the local community. After all, we need their support. We are a public servant.

THE COURT: When you say the local authority are you talking about the City Council? Who do you mean when you say local authority, Mr. Sieg? Do you have anything in mind?

MR. SIEG: I am not really inquiring. I would refer your Honor to—and maybe this will clear up what I am getting at—Exhibit 35.

THE COURT: Yes.

[270] **MR. SIEG:** And on page 13, last sentence of the paragraph at the top of the page—I have already brought out through this witness, as the court will observe from this ruling or order of the Civil Aeronautics Board, that Continental was in fact granted the right to use Santa Ana or, as described in here, Orange

County Airport, Long Beach Airport, Ontario, and Burbank.

Now, referring to the top of page 13 of the ruling or order, it states:

"Since cooperation of the local airport authorities will be needed before any service can be inaugurated, it will be up to the satellite carrier we have selected to convince these authorities that their expressed fears are exaggerated or are outweighed by affirmative considerations."

Q Now, the satellite carrier that is referred to in the paragraph that I just read is Continental, isn't it, Mr. Mitchell?

A Yes, sir. We have been designated as a satellite specialist in this area.

[271] THE COURT: And the authorities you are negotiating with are the airport authorities rather than the civil authorities?

THE WITNESS: Well, your Honor, I am not too well acquainted with it. I do know that the Councilmen have a—quite a debate involving whether they wish to have added air service at their airport.

THE COURT: It may not be so pertinent here, but the order indicates airport authority, it says airport authority. That is the reason I asked.

MR. SIEG: It says "local authority."

THE COURT: Doesn't it say anything about airport—

MR. SIEG: Yes, I am sorry, airport authority.

THE COURT: All right. Go ahead.

This may be a good time to take our morning recess. We will recess for about ten minutes.

(Recess taken.)

THE COURT: You may proceed, Mr. Sieg.

BY MR. SIEG: Q Mr. Mitchell, I have just referred to Exhibit 37 and read a portion from it, and I note that it was decided by the Civil Aeronautics Board, under date of May 12, 1970.

Up to that point I assume the issue was in [272] doubt or at least it wasn't sufficiently decided in your favor so that up to that point you made no preparations to implement any service in accordance with this particular route, would that be true?

A Yes, basically that is true. We had discussed the routing with some of the civic people in the various satellite airports, but until the decision was handed down we did not make any preparations for service.

Q Now, the record in this case shows that the ordinance in question here became effective on May 4th, a few days prior to this May 12th date.

May I ask you this: Had you up to that point made any contact with the Lockheed Air Terminal regarding use of the facilities of that airport prior to, let's say, May 12, 1970?

A I'm afraid I am not in a position to be able to answer that question, sir. I would doubt it, but there are other people who would make those contacts.

Q Prior to that time?

A Yes, sir.

Q In other words, you didn't personally participate in those initial discussions, is that correct?

A No, sir, I did not.

Q Did you at a later time participate in any discussions with Lockheed Burbank—with Lockheed regarding [273] the use of the facilities at the Hollywood-Burbank Airport?

A No, sir, I did not personally become involved in

Q All right. When did you first become aware of the fact that an ordinance of the type involved here, which you have described as a curfew, was in effect at the Hollywood-Burbank Airport?

MR. DAU: I will object to that question as being not relevant to any issue in this case.

THE COURT: I can't tell. This is cross examination, of course, and I am pretty liberal on cross examination. Objection overruled. It may well not be, but no one is going to be prejudiced, I don't think. Go ahead.

THE WITNESS: Well, I personally was not aware of this ordinance until perhaps two or three weeks ago.

BY MR. SIEG:

Q Two or three weeks ago?

A Yes, sir.

Q Do you know at this time what arrangements were made with Lockheed Air Terminal regarding the use of the Hollywood-Burbank Airport?

THE COURT: Arrangements by whom?

MR. SIEG: Arrangements between Continental—

[274] **THE COURT:** Continental?

MR. SIEG: Yes, sir.

THE WITNESS: Well, in the implementation of the new route, such as that, we have people in our facilities division who would insure the facilities are appropriate and—

THE COURT: He is asking you, do you know what arrangements were made.

THE WITNESS: No, sir, I do not.

THE COURT: He doesn't know.

BY MR. SIEG:

Do you know whether or not the arrangements which were made were reduced to written form, that is, an agreement between Continental and Lockheed Air Terminal, Inc.?

A No, sir, I do not.

Q You do not know that?

A No, sir.

Q Now, with respect to the—you have indicated in your previous testimony that you are using 727-200s at Burbank?

A Yes, that is correct.

Q And are you also using DC-9s?

A No, sir.

Q Just 727-200?

[275] A That is correct.

Q Who, in your organization, if you know, handled the arrangements with Lockheed Air Terminal, Inc., for the use of the facilities at Hollywood-Burbank Airport?

A As I indicated, we have a facilities division and I would certainly be someone in that division.

Q Do you know a particular person in that division?

A I know several people in the division. The head of the division is Mr. Richard Schorling, S-c-h-o-r-l-i-n-g.

MR. SIEG: Thank you. That is all I have, your Honor.

THE COURT: Very well. Any redirect?

MR. DAU: No redirect.

May Mr. Mitchell be excused?

THE COURT: Mr. Mitchell may be excused if there is no objection.

(No response.)

THE COURT: You may be excused, Mr. Mitchell.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: Your next witness.

[276] MR. CHRISTOPHER: Call Mr. Von Kann.

CLIFTON F. VON KANN,
called as a witness by the intervening plaintiff, having
been first duly sworn, was examined and testified as
follows:

THE CLERK: Please be seated.

Will you state your name, please.

THE WITNESS: My name is Clifton F. Von Kann.

DIRECT EXAMINATION

BY MR. CHRISTOPHER:

Q Would you state your residence address for the
record, please?

A Yes. My residence is Apartment 1024E, 4201
Cathedral Avenue Northwest, Washington, D.C. 20016.

Q Would you tell us what your occupation and pro-
fession is?

A Yes. I am the vice president for operations and
engineering of the Air Transport Association of Ameri-
ca.

Q That's the largest division or section of the Air
Transport Association?

A Well, my department covers the fields of opera-
tions, including such matters as safety regulations, noise
matters, air navigation and traffic control, international
technical matters. It covers engineering and maintenance
as well as supply and purchasing.

We coordinate or work with the various airline
[277] committees in these areas helping to develop air-
line positions and act as spokesman for the airlines on
them.

Q Tell us briefly, Mr. Von Kann, of your educa-
tional background.

A Yes. I received my Bachelor of Arts degree
from Harvard College in 1937 and a Master of Business

Administration degree from Harvard Graduate School of Business Administration in 1948.

Q You went from the latter educational experience into the Army?

A No, I went into the Army as soon as I graduated from Harvard College in 1937. I was a military student at Harvard Business School.

Q Would you tell us the aviation positions that you held during the course of your Army career, Mr. Von Kann?

A Yes. From 1959 to 1961 for just about two years, I was the director of the Army aviation in the Army General Staff. As such I was the senior staff officer concerned with the Army aviation program.

My last tour from 1963 to 1965 I was in command of the Army Aviation School and Center at Fort Rucker, Alabama. During the period 1957 to 1965 I was an active military aviator.

Q So, Mr. Von Kann, your entire career from prior to 1965, from the time you left Harvard has been in the Army [278] and ending with high aviation positions?

A That's correct, sir.

Q Did you retire in 1965?

A Yes, sir.

Q And you retired at what rank?

A A major general.

Q Would you tell us briefly, Mr. Von Kann, what the purpose is of the Air Transport Association of America?

A Yes. The Air Transport Association is the trade association of virtually all the scheduled or certified scheduled route carriers which are commonly called scheduled airlines. There are 32 members.

In general the Association serves as a vehicle for the various committees and conferences in which the airlines discuss non-competitive matters, and in which they seek to achieve technical standardization.

It also serves as a spokesman for the airlines in dealing with the Government and other aviation organizations.

Q Among the members of the Air Transport Association is Continental Airlines?

A That is correct.

Q Air West?

A Yes, sir.

Q United Air Lines?

[279] A Yes, sir.

Q Western Airlines?

A Yes, sir.

Q But not PSA?

A No, sir.

Q Why would that be?

A Well, PSA is an intrastate carrier, and all our carriers are involved in interstate coverage and subject to CAB jurisdiction.

Q Speaking generally in terms of trends, Mr. Von Kann, what type of aircraft equipment is now being used by the members of ATA, the Air Transport Association?

A Well, the members of the Association fly approximately 2400 aircraft. Most of these are jet aircraft. There are something in the neighborhood of, oh, I would say about 650 four-engine aircraft of the 707, DC-8 type; roughly 1100 of the—oh, no. I guess it's nearer 1300 of the smaller jets, the two and three-engine types, including the DC-9's, the 737s, the 727s and the very small number of turbo-prop aircraft which are gradually being phased out of the fleet.

Q What does the future seem to hold with respect to aircraft equipment usage?

A Well, the aircraft are going through what might be called the third equipment cycle of the jet age.

[280] The first cycle was really bringing the four-engine jets into the picture. The second cycle was bringing the so-called short range jets, the two and three-engine jets, into the system. And now we are starting out a process of bringing the so-called wide body jets into the system.

There are 60 or 70 747s already flying. In the next three years the airlines will be taking delivery of maybe 250 or more of the so-called tri-jets. That includes the Lockheed 1011 and Douglas DC-10.

So that the fleet is now going into a new phase where larger capacity aircraft are being introduced so that the increase in passengers can be accommodated without a comparable increase in the numbers of operation.

In addition these new jets are quieter, more comfortable; they give the passengers a great deal more comfort. They involve the newest and best of technology. They will be more productive.

THE COURT: Is this what we read in the paper about jumbo jets?

THE WITNESS: Yes, your Honor.

BY MR. CHRISTOPHER:

Q Mr. Von Kann, speaking again in terms of trends and not holding you to a specific number, but what has been the trend in the number of passengers carried by the [281] air carrier industry over the last decade or any other set of years you may have in mind?

A Well, taking the decade from '59 to '69, there has been a very impressive growth in passenger traffic. In

1959 the members of the Air Transport Association carried something like fifty-six million passengers. That number in '69 had increased to something around a hundred and fifty-odd million passengers.

It has virtually tripled. At this point in time it can be said from a recent survey that half of the people in this country have flown in our fleet.

Q Mr. Von Kann, could you cite a comparable trend figure with respect to air cargo?

A Yes. The air cargo is, of course, a later developing part of the industry. Ten years ago the scheduled carriers lifted something less than a billion cargo ton miles, which is an expression involving moving a ton of cargo an air mile.

That included freight, mail and express, air express service.

In 1969 that figure had gone up from under a billion to approximately 4.7 billion cargo ton miles.

Q Mr. Von Kann, in your role as vice president of operations and engineering, is it your business to keep generally apprised of the financial condition of the air [282] carrier industry?

A Not in detail, but certainly I have to stay fairly generally briefed on what is going on, yes.

Q Could you describe or characterize what the present financial condition of the air carrier industry is?

A Yes, sir, I think I can in general terms. The financial condition is one in which the industry is sorely beset at this point in time. Would you want me to elaborate on that?

[283] Q Well, I think it would be helpful for you to state the background reasons as you may know them for the condition that now exists.

A Very well. As far as the condition itself, in 1969 members made a profit of only fifty-five million dollars on an investment of over eight billion dollars and revenue of over eight billion dollars.

In other words, this was less than one cent per invested dollar, certainly a far cry from the criteria announced by the CAB in 1960 indicating that a return of 10½ percent on investment would be a fair rate of return.

Q So the rate of return in the period you mentioned was 1 percent rather than the 10½ percent specified by the CAB?

A Oh, I think it's much less than that. I said less than one cent on a dollar invested. Well, it is well under 1 percent, yes. Yes.

Q Would you continue, then, Mr. Von Kann, indicating the reasons as you may know them for this financial condition?

A Yes, sir. The first and foremost consideration, I think, is that we are having something which might be called a recession in the economy. This has slowed down our rate of growth considerably.

The rate of growth was running at something [284] like 15 percent a year in the mid-'60s up to about '66 which, of course, is very, very significant growth. Right now the passenger growth rate is down somewhere I would say, in the 6 percent ballpark.

Now, this rate of growth does not allow an industry such as ours sufficient elbow room to take care of the very rapidly increasing labor costs over which our control is minimal. Last year the labor cost went up by 10 percent, as an example.

And in addition to that, the airport costs, landing fees, rentals, the cost of construction around airports are increasing at a very rapid rate.

Our economic analysts indicate that the airports or airport costs have gone up about 16 percent in the last year.

So we have very rapidly rising costs and not enough growth to allow you to absorb these types of costs.

In addition, at this particular point in time, we are facing this re-equipage cycle which I spoke of. And at this moment the airlines have firm orders for, oh, almost seven billion dollars worth of these new jets over the next few years.

There are fairly firm commitments of, oh, maybe two billion dollars in airport costs over the next few years. In other words, we can see ten billion dollars [285] in costs facing us over the next few years. And it does not appear that it will generate profits that could even begin to touch this kind of expense.

Also this is a very bad time for raising money. The equities are low. Equity and securities is not a very good way to raise money these days. The interest rates are high when you go into debt financing.

So in all respects it's a very serious time for the airlines. Even though we have every hope that as the economic conditions improve the growth rate will go back to one which will allow us to continue or to resume some degree of profitability.

Q Mr. Von Kann, there has been testimony here of congestion in the national air transportation system. In your position as vice president of operations and engineering do you have any data as to the cost which may have been incurred by the industry as a result of this congestion?

A Yes. We do make estimates. As a matter of fact, I have one or two members of my staff who spend a great deal of time on this sort of thing.

right now it is our estimate that in 1970 our—the industry costs of delay—and this is both air traffic control delay and airport delay—will probably be on the order of one hundred fifty million dollars.

To be more specific, the delay costs of one [286] of our major air carriers a year ago was in excess of thirty million dollars.

Q For a single year?

A For a single year.

THE COURT: Before we get away, gentlemen, from this, your testimony on the less than 1 percent peak, did you say that was 1959 or '69?

THE WITNESS: No; that's '69.

THE COURT: '69?

THE WITNESS: '69.

And I might say, sir, that the first quarter of '70 makes it appear that the whole industry will suffer a net loss in 1970.

THE COURT: All right.

BY MR. CHRISTOPHER:

Q In connection with the testimony regarding congestion, Mr. Von Kann, there are exhibits in evidence here regarding the high density traffic rules. Are you generally familiar with that concept?

A Yes, sir; I am.

[287] Q Do you have any information on the effect on the distribution of hours of flights which, generally speaking, have resulted from the application of these high density rules?

A Yes. I'll try to answer that as well as I can. Of course, the problem here and our larger and more crowded airports is that the development of the air traffic control and airport facilities has lagged behind, in a sense, we are in a phase now where these

facilities just can't meet the demand and as a result the demand has, in effect, had to be metered by the Federal Aviation Administration.

This was done two years ago by putting hourly quotas at the five most seriously burdened airports, Kennedy, Newark, LaGuardia, O'Hare and Washington National.

It appears probable that other airports may have to be treated the same way in the future, until such time as air traffic control and airport capacity catches up with the demand again.

The net result of these quotas is to attempt to spread the traffic over the operating hours of the day so that you push flights away from the peak hours, which are usually the late afternoon or mid-afternoon hours, out into the so-called shoulders of the peak, and this results in a situation at Kennedy, for example, where you [288] have now maybe eight or ten hours of the day where things are going virtually up to the quota level.

Q Is one result of this to push flights into the shoulders, as you say, or the later hours in the evening?

A Yes, this would be the case, that as the traffic increases you will try to utilize the least well utilized times. It also has some tendency to put more emphasis on the use of the satellite or so-called reliever airports.

Q Can you describe generally, Mr. Von Kann, what steps have been taken by the air carrier members of ATA in the noise abatement field?

A Yes. The air carriers became concerned about noise long before we had jets. As a matter of fact, back in—almost 20 years ago, in 1952, as I recall, a committee of the carriers and their pilots came together in the New York area, in order to try to see what

could be done to alleviate noise, and these were propeller planes, of course, at that time.

The carriers did institute operation of procedures, which would abate noise. In other words, by modifying flight paths or the approach in climbout angles, or things like that.

Actions were taken to attempt to minimize the impact of noise on the population surrounding or living [289] around the airports.

When the jets came in the airlines invested roughly fifty million dollars in the development of suppressors to suppress the jet noise, and the installation of these suppressors into the fleet cost the airlines something in the order of one hundred fifty million dollars, in addition to which the operating costs were increased by maybe two hundred fifty thousand a year, or some amount like that, because the operating efficiency of a plane equipped with suppressors is not quite up to standard.

In addition to that, when the so-called fan jets came in, they were quickly brought into the fleet. The fan jets simply have large fans, or they are really a large form of propeller up at the forward part of the engine and they blow a great deal of air past the jet engine itself, and that tends to reduce some of the jet noise.

Q How does that differ from the turbojet?

A Well, in the turbojet all the air comes through the engine and it is quite noisy because there is nothing to insulate or in any way redistribute the blast coming out of the rear.

The fan jet brings air around the engine. That is why they call them bypass engines, and this air that is bypassing the air that is going through the jet [290] tends to quiet it to some degree.

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The new JT-9-D engine on the 747 is called a high bypass ratio engine. The bypass ratio is about 5 to 1, and that is one reason why this aircraft has fairly good properties, qualities.

Q Which aircraft still has turbojets in contrast with turbo fan engines?

A I don't know if I can answer that in any specific terms, but we are down to a rather limited number of turbojet engines. I would say there are probably not more than a hundred or so in the fleet. Most of the four-engine jets are turbo fans.

Q The turbojet then was the original or the pure jet?

A Yes, sir.

Q And the turbo fan is then an improvement or modification of that?

A That might be called the second generation engine.

THE COURT: Does the fan perform any service other than the noise reduction generally?

THE WITNESS: Well, it also helps to increase the amount of air that comes through the engine.

THE COURT: To cool it, in those aspects, or what?

[291] THE WITNESS: There is some cooling property for the air that goes around the engine and for the air that is introduced into the engine that increases the amount that can be heated and therefore you increase the power of the—

THE COURT: Chiefly for the noise properties, the fans?

THE WITNESS: Sir, I don't think I am enough of an engine engineer to answer that question. I don't think I should attempt to.

THE COURT: It probably isn't too important to the question here.

MR. CHRISTOPHER:

Q Mr. Von Kann, will you describe briefly what your concept of the national air transportation system is?

A Yes, sir. To me the national air transportation system has three major elements. First of all, there is the ground or the airport complex. In other words, our system of terminals.

Secondly, there is the airway part of the system, and this involves the FAA air traffic control system which, of course, is operated by the Federal Government, and this includes the towers, the centers, the flight service stations, the people, the communications, all the facilities by which the Federal Aviation Administration [292] regulates traffic in the air and attempts to insure adequate separation, as well as efficient and expeditious flow.

Then finally there is the fleet of aircraft itself and the part I am interested in is in, of course, the scheduled air carrier portion thereof.

I guess we should also point out that there are two other aspects of the system, and that is, a dual form of regulation, technical regulation by one portion of the Federal Government, that is, the Federal Aviation Administration. They regulate for safety, as I have mentioned, for efficient flow of traffic, safe flow of traffic, the noise, for the airworthiness of the aircraft, and then you have economic regulations by the Civil Aeronautics Board, which regulates from the standpoint of routes and fares.

So you have really these five elements in the system.



Q Will you briefly differentiate, Mr. Von Kann, between the air transportation system and the surface modes of transportation? What are the principal differences?

A Well, the biggest difference of all is that aircraft have such a range and such speed and they involve such technical complexity that they have to be managed on a centralized basis.

[293] As the earlier witness pointed out the scheduling complexities, this is quite true. One has to schedule them from the standpoint of the whole system, the maintenance requirements, to be certain that they are at the appointed place at the appointed time, so they can be maintained. They have to be scheduled so they interconnect with each other. And of course they have to be scheduled in order to have the crew cycles mesh. Other forms of transportation, of course, have scheduling problems but much less complex ones.

I think, also, the number of jurisdictions involved is a major difference. For example, a typical airline aircraft will make, in a 24-hour period will make ten stops in eleven different states and overfly maybe another ten or eleven states, and during this whole time they have to be operating under conditions where, if there is no visibility, the plane can be safely moved, safely separated from other aircraft, and brought in to land.

Now, with other forms of transportation, surface forms, you don't have these degrees of complexity. You know where the rails are, you know where the roads are. There is not a matter of—you just don't have this degree of technical difficulty and dependence on your other components of the system.

Q In view of these differences you pointed out, [294] Mr. Von Kann, what nature or kind of control or authority appears to be required for aviation?

A Well, with all types of aviation, and by this I mean transport aviation, both military and civil, it always has to be centrally controlled under a central authority, and in the case of the airlines we not only have to be controlled centrally but regulated, both technically and economically, by the Federal Government.

[295] Q Mr. Von Kann, there is an exhibit in evidence, which is Exhibit 52, which shows that if the Burbank ordinance were in effect at all airports in the country of a comparable character 1,009 flights would be in violation of that ordinance and would have to be canceled out or something done about them.

Your Honor, I might take this moment to supply an answer to a question which was raised yesterday in connection with this exhibit.

The airports listed in this study are all the airports listed in the official airline guide and the number that I didn't have yesterday, to my embarrassment, is 963.

Now, drawing your attention to the fact that 1,009 flights would have to be canceled because they would be in violation, Mr. Von Kann, I'd like to ask you to comment on the effect that this would have upon the air carrier industry and particularly with respect to the movement of passengers.

THE COURT: You mean nationally, now?

MR. CHRISTOPHER: Yes, sir.

THE WITNESS: Well, we don't have detailed information on numbers of passengers, but looking at the night flights, and from the statements of the other witnesses, and from our own experience, we know that many of [296] these night coach flights are

fairly well crowded. They take care of the people who are trying to save money. They take care of the military standbys, the students, people who are having to travel at that hour due to emergencies.

So you have some that have fairly good loads and some, of course, that don't have very great loads.

From this standpoint I guess it is fair to assume that any of these flights must average 10, 20 or 30 people. So that we are talking about ten, twenty or thirty thousand people a day who could not travel at that time and would have to attempt to do their traveling during the more crowded hours, which are the times at which we are trying to unload the heavy traffic.

BY MR. CHRISTOPHER:

Q Could you comment on the effect of the cancellation of as many as 1,009 flights upon the scheduling problems of the airlines?

A Yes. To supplement, again, what was said earlier this morning, this would present a scheduling problem of tremendous complexity. By that I mean that you would have to go through a very complicated scheduling exercise involving all the carriers, because it couldn't be handled by any carriers working alone.

First of all, they have to do their rescheduling in terms of the quotas at the five airports [297] I mentioned. To do this there has to be a very large and cumbersome scheduling committee meeting whenever the schedules are changed, and these go on for days and sometimes weeks. It is a matter of such complexity—

THE COURT: Who is at this meeting? Are all the carriers represented or just a committee?

THE WITNESS: No, all the carriers. First of all, CAB approval has to be obtained to allow them to meet.

THE COURT: This is on schedules and not routes? The routes have already been established.

THE WITNESS: The routes have been established.

THE COURT: And this is scheduling?

THE WITNESS: This is scheduling.

THE COURT: To coordinate the scheduling?

THE WITNESS: Yes, sir. In other words, you have so many slots at these five airports and there has to be some way of determining who gets a slot.

THE COURT: Yes.

THE WITNESS: And it is even now with the night flights as they are a problem of great magnitude. Actually it takes weeks of work, day and night.

THE COURT: That's under CAB authority and not FAA?

[298] THE WITNESS: There has to be CAB authority to meet, because they are dealing with matters which are just on the fringe of competitive items, so CAB has to give them antitrust immunity.

THE COURT: Then after they meet and do coordinate their schedules the CAB has to approve the schedules as set up by the lines, the carriers?

THE WITNESS: Sir, I am not a traffic man, but I am almost certain that they do.

THE COURT: Yes.

THE WITNESS: I am almost certain that they do.

THE COURT: And FAA only comes in in exercising the control to make these schedules work?

THE WITNESS: This is true. FAA has nothing to do with the schedules themselves. Now, the FAA does determine the number of flights that are reasonably safe to—

THE COURT: From the safety standpoint, that's

THE WITNESS: That's correct, sir.

Now, that is, as I say, one part of the problem. The matter of the interconnections between carriers is a matter of great complexity. We did a study with one of our major airlines—American, as a matter of [299] fact—and, if I recall, it was determined that Flight 25 which goes from New York to Dallas and on to Mexico City involves consideration of 100 interconnecting flights at these three cities.

So that when a schedule is changed there is a snowballing effect with all the potential interconnections and new interconnections have to be sought out if they can be.

Secondly, the loss of these flights at night would have a major effect on cargo and mail. Cargo and mail are basically night industries. The mail is collected during the daylight hours, delivered to the airport in the evening, sometimes, oh, from 8:00 o'clock, on.

Out here on the West Coast, for example, the produce is brought in during the day with the idea it can be shipped over to the East Coast and made available on the East Coast markets the next morning.

This just lends itself to night operation. So that the loss of these night hours for both the cargo industry and particularly the mails would have a dramatic effect. It would delay mail delivery, it would increase the expense, it would involve a great deal of additional loss in float as the mail would be in transit longer.

So for cargo and mail there would be a loss of capability which would be very difficult for the industry [300] to cope with and very expensive.

In this same connection, we even have quick-change aircraft like the 727's which can be changed from a

passenger configuration for daytime use to a cargo configuration for night use.

BY MR. CHRISTOPHER:

Q Mr. Von Kann, I would like to go back for a moment to the colloquy between you and Judge Crary regarding the high density rules and what you referred to as the metering of aircraft.

Now, the number of aircraft which are permitted into any of the five airports you mentioned are determined by what agency?

A Well, the numbers, the quotas, are established by the Federal Aviation Administration. They put out a rule establishing these quotas.

Q I would like—

THE COURT: Each airport?

THE WITNESS: At the five airports.

THE COURT: Those five on that regulation that was passed?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: Yes, your Honor.

MR. CHRISTOPHER: Your Honor, I would like [101] to—

THE COURT: It's an exhibit here.

MR. CHRISTOPHER: Yes, your Honor. Exhibit No. 48.

I'd like to bring that to the attention of the witness. I'd like to ask Mr. Von Kann to read the paragraph which is marked here in pencil.

Your Honor, it is the first paragraph to which I called your attention.

THE COURT: Column 3?

MR. CHRISTOPHER: Column 3. It begins, "In regard to . . ."

THE WITNESS: "In regard to some of the comments it appears important to correct any misunderstanding in regard to the purpose of NPRM—that's Notice of Proposed Rule Making—"68-20. The proposals contained in that notice were intended to provide relief from excessive delays at certain major terminals. They were not, as some persons concluded, intended to correct a safety problem.

"In response . . ."

Do you want the next?

BY MR. CHRISTOPHER:

Q No. That's far enough.

[302] So in view of the comment by the FAA in Exhibit No. 48, Mr. Von Kann, is it your understanding that the high density rules were based upon an attempt to avoid delays and improve efficiency?

A I would say that. Although the language I just read is correct, I think it could be said that if this delay and congestion were not taken care of in some way that potential safety problems might have presented themselves.

Q Inefficiency could lead into safety problems?

A Potential safety problems. Not that there were actual ones at that point. So it involves, I would say, both the prevention of a situation of a situation which might be hazardous as well as a more efficient and economical and reliable flow of traffic.

Q Do you have any specific data, Mr. Von Kann, with respect to the effect upon the maintenance schedules of airlines that might be useful in evaluating the effect of a nation-wide curfew?

A Well, yes. Because, again, the maintenance is—it is a nocturnal part of the industry. But the night

are needed for maintenance. As an example, in the case of United Air Lines, roughly 10 to 12 percent of their fleet receives maintenance every night. Now, some of this is routine maintenance and some of it is non- [303] routine. It's about a half-and-half breakdown.

Now, of the more than 100-odd stations that United serves they have some mechanics with a minimal capability at 25. They only have six bases, though, where they can handle major mechanical work and there they have the complete complement of trained people and facilities that are needed for what I call major maintenance.

Now, to get the aircraft at these places at the right time, of course, is another one of the complications of the scheduling problem which the carriers have to deal with.

Sometimes this involves repositioning flights at night and during the curfew hours so that the aircraft can be made available at the next location.

In my opinion, if these hours were no longer available on an overall system basis the carriers would be forced to establish additional maintenance facilities, which would mean, of course, more equipment, more people and at very considerable outlays.

Q Mr. Von Kann, right on that point would you give us an indication of the effect in an overall sense on the economic health of the air carrier industry if there were a nation-wide curfew requiring the cancellation of as many as 1,009 flights a day?

[304] A Yes, sir. I'll attempt to do so.

It is obvious that we haven't made a study in the way that Continental Airlines has done so. But I think it could be said that this would—considering

our financial condition at the present time, I think it could be said that this would border on a catastrophic development.

We have discussed the effect of attempting to accommodate many thousands of passengers during the daylight hours when the system is already tending to be overcrowded.

We talked about the scheduling complexities. It is quite clear again that whereas some schedules might be shifted to the daylight hours, some of them would have to be abandoned entirely. So that there would be some deterioration in the public service.

The maintenance problems have been discussed. This would undoubtedly result in considerably added maintenance costs.

The cargo and mail missions of the carriers would be affected in a way that is almost incalculable. If cargo could not be handled the way it is at night and has to be handled during daylight hours when, again, it would cause conflict with the passenger business or facilities, this would undoubtedly delay the cargo service and mean a loss of business to the air carriers, because some customers would go to other modes of transportation.

[305] The mail would be delayed. Half of the mail, I think it has been established, is handled at night. So there would be delay in extra expense to the public.

All these complexities and additional expenses coming at a time right now when the airlines are actually losing money—and it appears quite clear that they will in 1970—almost has to be looked at in terms of a disaster of some magnitude.

THE COURT: I think maybe this would be a good time to take the noon recess, Mr. Christopher.

MR. CHRISTOPHER: Your Honor, I have no further questions of Mr. Von Kann.

THE COURT: Very well.

MR. CHRISTOPHER: May I inquire if Mr. Sieg intends to cross-examine?

MR. SIEG: Yes, I do.

THE COURT: Very well. Then we will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m. of the same day.)

[309] LOS ANGELES, CALIFORNIA, WEDNESDAY, SEPTEMBER 16, 1970, 1:30 P.M.

THE COURT: Very well, Mr. Sieg, I believe you were about to cross-examine.

CLIFTON F. VON KANN,
the witness on the stand at the time of the noon adjournment, resumed the stand and testified as follows:

CROSS EXAMINATION

BY MR. SIEG:

Q General, I notice your title, at least as listed in the list of witnesses, Vice President, Operations-Engineering.

May I inquire, what significance the word "engineering" has in terms of your duties as a vice president.

A Yes, sir. The engineering portion of my department deals largely with the FAA on behalf of the air carriers on matters pertaining to airworthiness directives, engineering programs and maintenance programs.

Is this responsive to your question?

Q Yes. In terms of engineering, may I inquire as to your education in that area, as it pertains to aircraft.

A I do not have an engineering degree or an aeronautical engineering degree. My two subordinates, assistant vice president-engineering and a director of [310] engineering, are both aeronautical engineers and I depend on them for this type of technical knowledge.

Q I see. You did mention in your direct examination, or you made a reference to the fact that suppressors had been installed or had—the idea at least had been initiated by the airlines which formed your association or which form your association.

You mentioned suppressors on jet aircraft, did you not?

A Yes, sir.

Q Now, may I inquire exactly—would you enlarge on that statement as to what the companies involved in your particular association have done in that area to abate the sound or noise from jet engines?

A You mean since that time or to specify further on that point?

Q Maybe we had better start with what period of time you were referring to in your direct examination.

A I mentioned the early jets which, of course, means the early '60s.

Q Yes.

A And the suppressors I referred to is a type of hardware, nozzles and other devices which you can mount at the exhaust portion of the engine, which tends to reduce what is called the jet roar.

[311] THE COURT: Just on the early jets or is that also on the fan jets?

THE WITNESS: It is not necessary on the fan jets because it is a different technical problem, sir.

THE COURT: That million dollars that was spent to install these suppressors, that was on the original jets, is that right?

THE WITNESS: Yes, sir.

THE COURT: The turbojets.

THE WITNESS: The turbojets, yes, sir.

THE COURT: All right.

BY MR. SIEG: Now, back in 1960?

Q That was back in 1960?

A Early '60s would be the correct time range.

Q Now, had anything occurred between '60 and the present time, insofar as attempts or engineering by the airlines involved in your Association, in the way of further suppression by engineering techniques of noise, with respect to pure jet aircraft?

A I am afraid I am going to have to ask you to clarify that, if you will, sir, because I am not sure what you mean by pure jet aircraft.

Q Let's take a 727 as a pure jet.

A Well, the 727s are of the turbo fan type, I believe, and with the types of aircraft one has to depend — [312] well, let me answer this another way.

There are two types of noise that emanates from jet aircraft, so-called jet noise or the jet roar, which is largely the flow of air coming out of the tailpipe, and then there is the internal noise or what they call engine noise or fan noise, which is associated with the high frequency whistles and that sort of thing.

Now, the airlines have initially emphasized the suppressors, which had to do with the jet roar. As the second generation jets came in a great deal of acoustic material was inserted, which tends to change the frequency of the engine noise and tends to minimize the disturbing qualities of what I call the whistle or the engine noise.

During the latter of part of the '60s the main efforts to reduce jet noise further or the jet roar further

have centered on the so-called high bypass ratio engines which we described earlier.

There is still additional research now underway to determine what further can be done to suppress the so-called jet roar, and we are doing all we can to encourage this sort of research.

I might say that in a regulated industry, such as ours, it does not have a great deal of money to invest in R and D, but we tend to do all we can to encourage [313] this by the manufacturers or government programs that will result in this type of R and D.

THE COURT: Where does your money come from, from dues or contributions from your member carriers?

THE WITNESS: I am sorry, sir. When I say "we," I meant the industry as a whole. So far as the Association, yes, our members pay dues according to a so-called ton mile formula.

BY MR. SIEG:

Q If I have been correctly reading certain articles in the newspapers, is it true that at the present time there is technology available to retrofit the pure jet or jets to substantially reduce the noise that they emit?

A I would say that is not really true. We have gone into that in great depth and I have personally. What has been done is that two engine aircraft configurations, one for DC-8 and one for 707 have been tested with prototype nacelles, largely involving additional noise suppression material, and which, as I have indicated, is aimed namely at the engine noise, rather than the jet roar.

With these two prototypes there was some progress in reducing that type of noise. Call it approach noise, if you will.

There was very little effect on the jet roar. [314] There are probably something like maybe, oh, fifteen or so different engine airframe configurations with the four-engine jets we have, in effect, only done a very small part of the R and D that would be necessary to retrofit the entire four-engine fleet.

Now, the studies that have been made by the manufacturers, as well as the airlines and in some cases independent studies, indicate that there would actually be very little perceptible improvement if a program of this magnitude and expense were undertaken. And furthermore, the cost would run somewhere in the vicinity of a million dollars per aircraft, so it has been our conclusion that the benefits which would accrue to the public, the perceptible benefits be very—would be minimal. The program would be tremendously expensive. We are talking about a program which altogether would run the industry over a billion dollars, which is just completely beyond our financial capabilities at this time. And that rather than do this we should continue the R and D to try and get suppression equipment that is more effective and with better economy.

[315] Q Again, referring to general information—maybe you are likewise aware of this—I recall at the time the Los Angeles—LAX put into operation the new runways that there was a demand, if you can call it that, or at least a request that LAX restrict the use of those particular runways to 747's.

Now, I would assume from that and also from what you have indicated that the 747 is substantially quieter than, say, a 707 or DC-8. Is that true?

A I have heard the tapes on all those aircraft and I would say that the noise of the 747, although somewhat of the same order from the standpoint of decibels,

seems to be a less objectionable type of noise than that of the 707 and DC-8. I think this would also be true of the new wide-body jets coming into the fleet.

Q This is like the Lockheed Tristar?

A Yes, sir. And the Douglas DC-10.

Again, this is hearsay, but I am told that everybody who saw the initial flight through the DC-10 seemed to be very quiet.

Q Are you able to elaborate on your previous testimony as to how or why the 747 achieves a more desirable sound level, for example, or a more acceptable sound?

A Not entirely. I am aware of the fact that there is a very considerable amount of acoustical [316] material in the nacelle of that engine. But beyond that I would not want to qualify myself as an expert or attempt to.

Q Now, I think you indicated that the airlines forming or making up your association have presently in operation around 60 to 70 747's. Was that correct?

A Sir, that is a rough figure. It undoubtedly includes some foreign carriers not in the association. When you have a new plane coming into the system it is changing so rapidly that one is never quite up-to-date. I'd have to put that in as an estimate, but I think it is probably within a reasonable figure.

Q Well, I wasn't trying to hold you down to any specific figure. But this is an approximation?

A Yes, that's an approximation.

Q Then this number is going to increase substantially with additions of 747's and the other wide-body jets?

A Wide-body jets, yes, sir.

Q Now, how many passengers does, for example, a 707 normally carry, or is it able to carry?

Well, in some of the denser configurations the 747, I guess, can go as high as 160 people in an all-coach seating, or something of that order of magnitude.

Q Yes. And the 747 or other wide-body jets?

[317] A Well, they will be up in the 250 to 350-passenger category, again depending on the configuration. I guess with some versions of the 747 you could get in over 400. But it is in those orders of magnitude.

Q Now, prior to the introduction of the 747 did your members have adequate jet aircraft, a sufficient number of jet aircraft to handle the passenger load?

A I don't know if I can properly answer that question. You see, this really gets into a matter of decisions of individual companies. The matter of how many planes to buy and what routes to apply them on is done individually. This is not a matter on which the trade association is consulted. I would say that probably the airlines at that time, three or four years ago, with business growing as it was, they were purchasing rather actively. But whether or not they considered this adequate or what they considered as adequate it would be hard for us to say.

Q May I inquire, then—maybe you can answer this question—with the introduction of the wide-body jets, as it continues I would assume that these jets will replace the other jets in your various passenger routes throughout the country and into foreign countries.

A Again, I would say that this could only be true to a certain extent. Throughout the system you have routes that have different passenger densities, where [318] you can only generate so many passengers a day. For some of the lighter routes undoubtedly the airlines will continue to operate the small jets. The 727 stretch 727 in an all-coach configuration can

handle better than 150 passengers. So I think that no matter how far into the future you look you will find a mix of different types of aircraft throughout the fleet, depending on the routes, the densities, the traffic load that that route can be expected to yield, for some of the larger jets would just be too large.

THE COURT: Will the 747—is it contemplated that it would replace the 727 traffic or the 707 traffic?

THE WITNESS: More of that, your Honor. More of the 707 type of traffic.

THE COURT: Well, what about the runway facilities that are required for the larger jets, the 747, can they use the runways of the 707?

THE WITNESS: Yes, they can.

THE COURT: Can they use the runways of the 727?

THE WITNESS: Well, I am not quite sure of that one. I don't have that information available.

THE COURT: Or the DC-9?

THE WITNESS: Well, I have some doubt about [319] that. I'd have some doubt about that. I think the overlap would probably be with the current four-engine type of jet or the two- and three-engine type of jet. I think their load would be larger than that for most runways on which those jets are used.

BY MR. SIEG:

Q How long do you believe, General, that we will have to in some form face up to the noise created by the 707's and the 727's? How soon will they be phased out of operation either by your companies or by virtue of just falling apart or general obsolescence?

A I would say, sir, that assuming a 12-year life on these machines, which is a reasonably—that's a fair figure for their use by the airlines, because after

they have been operating a certain number of years they become more expensive to operate. Then there is a tendency to bring more productive and newer equipment into the system.

Assuming that, you would probably have a phase-out of the four-engine fleet somewhere in the early '80s. This again is an approximation, but I don't think it is too bad a one.

Now, I'm only speaking of scheduled airlines. I can't say that those planes are going to go into the salvage yards. Somebody else will buy them for their—foreign carriers or other operators. So that they may still [320] be around.

But I think as far as the scheduled airline industry is concerned that's a reasonable expectation.

Q Does your association have any policies regarding the use by its members of airports which by virtue of their location create a serious problem to persons residing in the vicinity?

A You mean from a noise standpoint?

Q From a noise standpoint.

A I think all one could say on that is that we in the association are keenly aware of the problems which noise creates. We have attempted to undertake any programs or any effort which we feel will produce relief. As far as where the various carriers that form the association operate, these are things which they have to work out.

In other words, we process the various requests that they put in for airport facilities and in turn submit them to FAA, which is responsible for the national airport plan. But as far as the airports used by the airlines, I think the trade association would have to be called a channel rather than a policy-making or decision-making group.

Q Well, specifically are you familiar with the Hollywood-Burbank Airport?

A In general terms, yes. I have flown in it [321] out of it once or twice. I don't have great familiarity because our regional offices deal with local problems.

Q I assume from that you are not aware of the problems which it has created in this City of Burbank.

A Not in specific terms, sir.

[322] Q Well, if your policy is a hands off policy, let's say, generally in terms of where your members operate, may I inquire why your Association is intervening in this case?

MR. PACKARD: I object. This is irrelevant.

THE COURT: No, objection overruled.

THE WITNESS: Yes, sir, we are intervening because we feel that an action such as is contemplated here, if carried out on a widespread basis, which it indeed would be, would create an intolerable burden on the air transport system and on interstate commerce.

BY MR. SIEG:

Q Why do you feel this is going to be carried out on a national basis?

A Sir, I can only answer that in the light of the experience that I have had and other people have had dealing with the local authorities, and my answer is it is inevitable.

Q What is inevitable?

A That the institution of a law or a rule or curfew such as this would be followed by virtually all comparable types of local airport authorities.

THE COURT: What you say is generally the noise is so bad that if this ordinance is valid, why, everybody in a like situation would pass a similar ordinance?

[123] THE WITNESS: I think that is a fair statement, your Honor.

THE COURT: I think Mr. Sieg will almost go along with that. Maybe not.

MR. SIEG: No, I wouldn't. I would go along on the basis that the particular and peculiar location and situation of an airport in relation to its surroundings and inadequacy in terms of land should be a proper criteria for local action.

I do not suggest, and I am certain the General would not suggest, that if this court should determine that this ordinance is valid and it is not in conflict with any federal statute or regulation, that Los Angeles International Airport would then be restricted to the same extent.

THE COURT: Not automatically certainly. The satellite communities might well pass a similar ordinance. It may have something to do, before we get through, with commerce, and so forth, I don't know.

We are getting evidence in now and we will argue it later.

MR. SIEG: Yes.

THE COURT: We all know human reactions to noise and the efforts to abate it, legal efforts.

MR. SIEG: Right. One of the—I won't [324] argue the case at this point.

Q The figure was thrown out that there were 963 airports listed in a certain guide of some kind and utilized, I think, in some of the compilations that have been introduced in evidence.

Have you any estimate or approximation as to how many, if that is an accurate figure,—or a thousand, say, as a general figure—how many of those are privately owned as opposed to those that are publicly owned?

A I do not have that information, sir. It is possible counsel has.

Q Would you have any estimate?

A No, I would not.

Q It has been indicated in the pleadings that Lockheed or Hollywood-Burbank is one of the largest or the largest private airports in the country.

Are you familiar with any other large private airport, not operated or controlled by a public agency?

A No, I really am not, sir. You see, we have—the way we are organized at this time there is another department more or less on the same level as mine that deals with airport facilities and airport programming, and I just don't have a great deal of familiarity with this aspect of the problem.

[325] MR. SIEG: That is all I have at this time, your Honor.

THE COURT: Very well. Any redirect?

MR. CHRISTOPHER: One or two questions in clarification, your Honor.

REDIRECT EXAMINATION

BY MR. CHRISTOPHER:

Q Mr. Von Kann, do you know whether the runway criteria are different for the 747 on the one hand from those which would be applicable, on the other hand, to the two other new wide body jets, the DC-10 and 1011?

A No, I don't have that information. The 747 is a heavier aircraft, so I presume it might be rated or require a slightly heavier runway. But this depends on other factors, such as the landing gear construction.

Q So when you answered the question that the new wide body generation would generally be using the same kind of airports or have the same runway criteria

the 707, your answer was largely in terms of the 747, rather than in terms of the other two wide-body jets?

A Yes, I have more information on the 747. That was one of the original criteria.

I would expect, however, that the others would have similar—would be in the same general ballpark.

MR. CHRISTOPHER: I have no further questions, [326] your Honor.

THE COURT: Mr. Sieg, do you have anything further?

MR. SIEG: Nothing further.

MR. CHRISTOPHER: May Mr. Von Kann be excused, your Honor?

THE COURT: Yes. You may be excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Your next witness.

MR. CHRISTOPHER: Mr. James T. Pyle.

JAMES T. PYLE,

called as a witness by the intervening plaintiff, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Will you state your name, please?

THE WITNESS: James T. Pyle; P-y-l-e.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. CHRISTOPHER:

Q Tell us what your residence address is, Mr. Pyle.

A Sandy Hill Road, Oyster Bay, Long Island, 11771.

Q Tell us what your educational background and [327] occupation and present position is.

A Yes. I was a student at Princeton University with a liberal arts degree, and then I went to work for Pan American Airways in 1935, and was with them for about eleven years.

Q In what capacity?

A As an airline inspector, did some instruction, then a junior executive in Latin American operations.

Q What is your present position?

A My present position is director of the Aviation Development Council at La Guardia Airport, New York City.

Q Will you tell us what the Aviation Development Council is, what its purposes are and what the membership is made up of?

A The Aviation Development Council goes back to the organization that was formed, to which Mr. Von Kann referred this morning, in 1952, and it is kind of a new derivative of that effort.

It is formed by the airlines serving New York City and Port of New York Authority, which is the airport operator. They support the program and its intent is to, I would say, plan programs that will, as their basic objective, stimulate and promote the growth of air commerce in every respect. Not only to provide the necessary facilities, but to insure that in doing so [328] we have due regard for some of the problems it creates for the communities.

Q What airports are involved in Aviation Development Council, which is known as ADC?

A John F. Kennedy International Airport, La Guardia Airport, Newark Airport, which is one of the three airports serving New York City, Newark, New Jersey.

Q When did you take over as director of ADC?

A On 15 August 1964. I have been there about six years.

Q Prior to that time you had held high government positions in the field of aviation.

Would you trace briefly your career in governmental aviation circles?

A Yes. In 1953 I left Denver, Colorado, and went to Washington as a special assistant to the Assistant Secretary of Navy for Air in the Navy Department as an airspace specialist and adviser, and I worked there for about three years and then left, at President Eisenhower's request, to become Deputy Administrator of the Civil Aeronautics Administration.

Unfortunately, shortly thereafter the Administrator died. I then became the Administrator in 1956.

Q Of the Civil Aeronautics Administration?

[329] A Of the Civil Aeronautics Administration, CAA. In 1958—

THE COURT: How does that fit in with the Civil Aeronautics Board?

THE WITNESS: The Civil Aeronautics Administration, sir, is the operating arm—

THE COURT: Of the Board?

THE WITNESS: No, of the Government.

THE COURT: I see.

THE WITNESS: In terms of its responsibility with respect to air traffic controls, certification of aircraft and so forth. It does, or, did what the present FAA does now. And I was going to explain that relationship.

THE COURT: All right.

THE WITNESS: The Civil Aeronautics Board, of course, is the economic arm of the aviation section of the Government, and certificates of convenience and necessity, service patterns and fares, and so forth.

In 1958 it became painfully obvious, unfortunately, as a result of several accidents, we needed to have a far stronger arm of the operating side of the Government, and a few of us got together and basically set the stage for the Federal Aviation Administration or Agency in the early days, which became the Act of 1958, and [330] created the FAA or Federal Aviation Agency at that time, into which we folded the CAA, and we were the major component of the CAA—of the FAA.

BY MR. CHRISTOPHER:

Q So having been administrator of the CAA your next post was as deputy administrator of the new FAA?

A That is correct.

Q And the CAA having been folded into the FAA.

A That is correct.

Q By the legislation.

A And the FAA assumed all the responsibilities of the CAA, plus several additional ones, the most important of which was the rule making authority which previously had been vested in the Civil Aeronautics Board.

Q Mr. Pyle, you indicated you had some involvement in connection with the 1958 Federal Aviation Act.

Will you tell us what that involvement was, what role you played?

A Well, it is a little difficult to explain exactly the role, except what we were after, frankly,—and I would hope this would be responsive—we were after a better—or a better structure in order to handle the complexities of the management of the airspace and

insure safety of operations across the board. This involved, of course, when you speak of the management of the airspace, [331] the relationship with the military services, which had been far less satisfactory, and, in fact, probably the two military accidents were the problem that precipitated the creation of the FAA.

(332) One of our prime objectives was better use of the airspace, more efficient use of the airspace, or, in the traffic controller would say, the expeditious movement of air traffic.

Q What particular problems of efficiency were you trying to correct in the development of this new Act?

A We were trying to correct the inadequacy of the present—the management of the airspace at that time in terms of facilities that were not adequate to handle the job; in terms of some of the procedures that were being used; in terms of the responsibilities with respect to the users of the airspace, particularly the military services.

Q What was the nature of the safety problems that you were seeking to correct, if you can differentiate them from the problems of efficiency which you have just described?

A In a very capsulated form I would say that the most serious problem that we were faced with was perhaps the disciplinary operations, the discipline that was involved both within the airspace and within the individual operations of the air carriers and general aviation. Using a Navy expression, we felt a tighter ship was needed.

Q Now, Mr. Pyle, in your duties as Director of the Aviation Development Council, have you ever made a study of the effect of a night curfew or a curfew on night [333] operations?

A Yes, we did. We were faced with this as a threat on many sides, with particular respect to the three airports for which I am responsible in part.

Q What year was that?

A This was in 1966. We made a fairly elaborate analysis of the whole problem and we came to the inevitable conclusion that it would be an untenable burden on air commerce, that very serious economic penalties would be created and that it would reduce the service which, after all, the air transport industry is but a service industry to a vast segment of the American population and the financial world, air commerce in a broader sense. As a result we took whatever means we could to insure that this would not become a reality. In essence, we could not live with it.

Q Mr. Pyle, I would like to have you tell us more about the nature of the study you conducted. What was the basis of the study? Or what assumptions were used in making your study?

A Well, we assumed, for one thing, that if a curfew of any kind were imposed because of the problems—and we, as General Von Kann also pointed out, are perfectly well aware of some of these problems—one of the principal responsibilities I have is to keep closely tuned in with all [334] that's going on and towards the relief of these problems—we assumed that a curfew once imposed and once it became a fact of life would proliferate across the country.

Q Why is that? Why did you assume that?

A Because of the problems that are created, without any question, due to aircraft operations. Those who are close to airports find problems with aircraft operations. We are well aware of this. As a result we try to do what we can to attenuate them. But the

fact remains that if a curfew is imposed that it becomes quite evident that it will be picked up across the country and become a nation-wide thing and be implemented on a nation-wide basis.

Q What airports were directly involved in your study?

A We studied, as I recall, 25 city pairs. By this I mean 25 cities that had service to and from the New York Airport. These were cities which ranged in terms of traffic the first 25 cities in terms of traffic served by New York.

Q Now, what kind of a curfew did you assume for purposes of your study?

A We assumed a curfew on operations from midnight to 7:00 in the morning.

Q When you say it was curfew on operations, I [335] assume you mean both landings and takeoffs.

A That is correct. An operation technically would be a landing or takeoff. We assumed that if a curfew was imposed as threatened in New York at that time it would be on all operations at an airport.

Q Now, Mr. Pyle, you have given us what I might call the bottom line of your study, that you couldn't live with it, as you said. But I would like to talk to you in more specifics about the results of your study.

Did you study the effect that such a curfew might have on the very problem that caused this, the noise abatement problem?

A Yes, we did. Our conclusion was that it really would not help.

Q Why was that?

A For the simple reason that if you impose a curfew and you try and maintain a modicum of service to the traveling public you have to bunch the flights

in hours preceding or following the curfew. In those hours preceding the curfew these flights would be bunched at hours which are relatively less used than the peak hours. I am speaking, say, from 9:00 to midnight, in our case, in our study.

We found, however, and not surprisingly, that the complaints that originated as a result of aircraft [336] operation in the hours of 9:00 to midnight were far more—there were a greater number of complaints per number of operations than the hours of, let's say, from 6:00 to 9:00. In other words, the late evening hours operation generated complaints.

So this was one point we felt we were not really helping the situation were we to impose the curfew provided we could have lived with it.

Q Did you make any analysis in connection with your study of the effect of a nation-wide curfew on postal carriage, postal service?

A Well, there were several conclusions with respect to that. With respect to the postal service it is estimated that one billion letters annually in and out of New York would be delayed 24 hours.

Now, there were, of course, other aspects to it in terms of service. Shall I deal with those?

Q Yes, go ahead.

A We estimated that approximately 1,107, I believe the figure is, weekly services would be eliminated by the curfew. Those are direct operations, either landings or takeoffs. But that another 1,370-odd operations would be eliminated because of the positioning problem, which I think Mr. Mitchell described this morning. In other words, a total of 2,474 operations would be eliminated. Of these, [337] 607 were all cargo and that represented 42 percent of the all-cargo operations.

So it was a dramatic reduction in service to the New York community.

Q Did you make any analysis in that connection of the effect of a nation-wide curfew on passenger service?

A Yes. But I would have to point out that these figures are extrapolations and estimates in this respect. We ascertained that approximately a million passengers a year would use services during the night to leave New York.

Now, if you add to that—now, this, I might point out, is based on 1965 schedules. This was the year 1966. If you add to that the people who are incoming, I suppose you could estimate a figure of approximately two million passengers a year that would be affected. One passenger in four originates or is destined to New York nationally.

So, using that figure you come up with a figure of approximately eight to nine million people who would be affected nationally in 1965.

Operations since 1965 have—or passengers carried have increased approximately 70 percent. So that you would apply the 70 percent factor to, say, eight million and you end up with around thirteen to fifteen million [338] people affected.

Q Have you given us the principal results of the study as you now recall them?

A Well, I think I would like to just mention one other aspect and that is the air cargo business. Air cargo literally exists on its ability to operate at off-peak hours. This, of course, is a very great convenience from the standpoint of congestion in the airspace. But, more importantly, it is a service to the customer who is either the shipper or the consignee. In large measure

the freight is assembled and loaded somewhere between 12:00 and 2:00 o'clock in the morning. I am speaking specifically, now, of New York. It then leaves and is on the Coast about 5:00 o'clock in the morning. It is at the consignee's dock on the order of 8:00 o'clock, depending on the distribution at this end.

Now, all of this business has been built up by companies such as, for instance, Raytheon, who no longer have large warehouses of parts, they ship it out to serve their customers using airfreight. They can eliminate all their warehousing.

If you have a curfew and if it is nation-wide that kind of service just becomes practically nonexistent or no longer meets the requirements of the public.

Q Mr. Pyle, I think you told us, if I recall [339] your testimony correctly, that your study showed that there would be a one-day delay for approximately one billion letters.

A Yes.

Q Did you make any estimate or analysis of the effect of this delay on our economy as a whole, our national economy?

A Not quite in that respect. In other words, in respect to the airmail service. But we did find, for instance, that most of the canceled checks that move throughout the country usually go through the New York Clearing House in one way or another. These are brought in by airfreight. Because of airfreight and because of its ability to move at night those checks go through the clearing house the following morning. This in the economy of 1965 meant a saving in bank interest of \$34,000,000.

Now, I suppose if one were to extrapolate that into terms of money moving around now it would be far more, perhaps close to \$100,000,000.

I can only cite that in 1967 there were 1.3 trillion dollars worth of checks that went through the New York Clearing House, most of them coming in by air-tight.

Last year, 1969, 3.3 trillion dollars.

So there is an order of magnitude that has [340] to be applied to the figure I gave you. \$34,000,000.

Q Mr. Pyle, the study you made was based upon the assumption of a nation-wide curfew on both landings and takeoffs.

A Yes.

Q And no doubt the figures you have given us were made on the basis of such an assumption.

How would you think that would be diminished if the curfew were solely a curfew on takeoffs, as it is in the case now before the court?

A We have not ever looked at it in this form, but I would say conservatively it would be 50 percent, but my intuition, and this perhaps is dangerous, would say it would be somewhat more.

The whole problem of positioning aircraft, which I think Mr. Mitchell explained fairly adequately this morning, gets involved in this. Unless you have aircraft to originate schedules the following morning and can get your aircraft through the maintenance procedures to their proper maintenance bases, your system falls apart very quickly.

Q And so you are saying that rather than cutting your estimates or your figures in half, you think they would be cut somewhat less than half if the assumption were again a curfew only on takeoff?

[341] A Yes.

Q To whom was your study or the results of your study reported in 1966?

A Well, we after study and being sure that this was approved by all concerned, that it was in fact a valid study, we presented it in a letter to the Borough President of Queens, The Honorable Mario Cariello, in a letter because it was in his borough, which is a part of the City of New York, in which the two airports lie, that this threat of the night curfew was probably the most important.

MR. CHRISTOPHER: I would like to hand to the clerk and ask him to mark as our exhibit for identification next in order—

THE CLERK: Plaintiffs' 55 for identification.

MR. CHRISTOPHER: —55 for identification a copy of a letter to The Honorable Mario J. Cariello, dated May 10, 1966, signed by James T. Powell.

(Plaintiffs' Exhibit 55 was marked for identification.)

BY MR. CHRISTOPHER:

Q And I will ask you if that is the letter to which you have just referred.

A Yes, it is.

[342] MR. PYLE: Your Honor, I would apologize for the terrible copying job.

THE COURT: It is legible.

BY MR. CHRISTOPHER:

Q Does this letter basically summarize the information which you have given the court in the course of your testimony today, Mr. Pyle?

A Yes, it does.

MR. CHRISTOPHER: I offer the letter in evidence, your Honor.

THE COURT: This was submitted as being a report, the reports made by the Aviation Development Council of New York.

THE WITNESS: Yes, it was.

THE COURT: Was that under your supervision?

THE WITNESS: Under my supervision and we did employ consultants to insure we got accurate figures.

THE COURT: Exhibit 55 is ordered in evidence.

(Plaintiffs' Exhibit 55 for identification was received in evidence.)

THE COURT: What are the chief complaints? Noise is a chief complaint, would you say?

THE WITNESS: Yes, your Honor, noise, I [343] think, has been the factor which triggered this approach on the part of some of the communities around the airport.

THE COURT: They complained of articles of soot and things like that.

THE WITNESS: To a lesser degree. However, we have been able to explain to them the physical problems, if you will, that are involved, the engineering problems, the operational problems, that causes this problem.

THE COURT: Very well.

BY MR. CHRISTOPHER:

Q Since 1966, Mr. Pyle, have you given further consideration to the question of a night curfew or a curfew on night operations?

A Well, only to this extent: That we are always concerned that someone will come up with this idea, because our studies, which convinced us this is not a practical problem or not a practical solution, and we are always keen to anticipate whenever or wherever it crops up and to then work with the communities and explain to them why you don't get there from here with this kind of a solution.

Q Have you changed your mind about the feasibility of a night curfew between 1966 and now?

A Not one iota.

Q While the reported cases in this field from [344] your area, such as the Hempstead and Cedarhurst case, indicate that airports are often surrounded by towns or municipalities. From your long experience in aviation, can you give us some other examples of airports that are surrounded or underlaid by conflicting political jurisdictions?

A Yes. Of course, the three that are under my jurisdiction are prime examples of this factor.

Q Why don't you tell us about those first.

A Well, the worst problem we have, I'm afraid, is with Kennedy International, which is surrounded on two sides, or really two-thirds of the perimeter lies within New York City, The Borough of Queens, and one-third within Nassau County. Politically they are pretty far apart, in fact, they rarely talk to each other.

La Guardia affects two boroughs, Queens and the Bronx.

Q They both have law-making power with respect to some aspects of the airport?

A Yes. I am not a political scientist, but I think the answer would be yes, in part, to the extent that there is considerable squabbles at certain levels in the New York City Government with respect to operations. It is always human nature when one political jurisdiction has operations over flight or their area, they come to us and [345] say, "We'll just move it somewhere else. We don't care what happens, but let's get it from off the top of our heads." And we are, of course, always caught in the middle. This happens between the Bronx and Queens and Manhattan to a lesser degree with respect to La Guardia.

between Elizabeth and Newark, New Jersey, with respect to Newark operations, and, of course, I have mentioned the Nassau one.

I think the same thing applies in, for example, Chicago.

Q What is the problem there?

THE COURT: O'Hare, are you talking about?

THE WITNESS: Yes, sir, O'Hare Airport in Chicago. Well, there is the city, municipality, I guess it would be called properly, and the only thing they ask of us is, "Keep the airplanes away from us. Just put them somewhere else."

I will say in the case of Chicago there has been very intelligent land planning. To the extent Cook County could it has been able to eliminate residential areas, or prevent the encroachment of residential areas upon the airport.

This is one of our problems. Airports are magnets and people come close to airports to live and then, of course, immediately start complaining, and this is [146] understandable.

Other cities, for instance, Atlanta has two political jurisdictions. The county line runs right through the middle of the Atlanta Airport.

We had trouble at Dulles, Loudoin and Fairfax Counties. The line goes right through the middle of that—

BY MR. CHRISTOPHER:

Q I am sorry. I didn't hear you. Did you say Loudoin?

A Loudoin and Fairfax Counties.

Q Thank you.

A So there are many examples. I can't think of any more at the moment.

Q Mr. Pyle, we have here in evidence, and perhaps you heard it referred to this morning, a study based upon the airlines guide, which shows that more than a thousand night flights would have to be canceled or at least they would be in violation if the Burbank ordinance were enacted at all comparable airports having scheduled operations.

Based upon your experience with your earlier study and your experience in aviation, will you comment on the effect of such an ordinance on a nation-wide basis?

A I think it would in general have the same effect that we found in our study. As to the qualification [347] of those effects I would be, I think, ill prepared and I would not be able to comment without a detailed study as to those various airports that would be affected. But it is in the same ball park as the results we found, namely, that it would be an untenable burden on the mail service, on air cargo, on passenger service for those who want late night service.

THE COURT: Did your study include—I haven't read it. Did your study include the three airports, Newark, Kennedy, and La Guardia, or just La Guardia?

THE WITNESS: All three, your Honor, the New York service provided by those three airports.

THE COURT: That is what I thought you said.
BY MR. CHRISTOPHER:

Q You said earlier in your testimony, Mr. Pyle, that efficiency was one of the main goals you were trying to achieve when you and others worked on the 1958 Act.

Will you tell us whether or not you would regard the curfew on light operations of the Burbank character extended on a nation-wide basis as being compatible with that goal?

A Not at all. I think it is directly—it would be—I can't think of the right way to express it, but I think it would be just the opposite. It would [348] create maximum inefficiency. You have the problem of bunching the flights and I think we must think in these days, with the congested airspace that we have, that this is one thing we can ill afford, if we are going to properly serve the traveling public.

The delays at some major airports are getting pretty extensive. Two years ago, for instance, in New York we had delays, average delays of two hours. There were certain factors that were responsible, over and above the lack of airport facilities. But we do not have enough concrete on which to operate the services required by the American traveling public.

As a result, if you eliminated some of this concrete for periods—I am speaking of the runways, of course—for periods during the day or using it mathematically one-third of the day, obviously you do not have an efficient environment in which to serve the traveling public or meet the shippers' requirements or the mail requirements.

[349] Q You have been in the air business all your life, Mr. Pyle. Could you differentiate for us between air transportation and the surface modes of transportation? What strikes you as being the principal differentiation?

A Well, I think in a few simple words I would say flexibility and the fact that the airplane does not recognize boundaries to the same extent that the surface modes do.

The approach to the solution of problems in air transportation at the local level just does not work. It has to be done on a national basis because it is a national operation.

Just one example of this—I don't know whether it is pertinent or not—but, for example—I think the State Department gets a little unhappy about this—we handle air traffic over Canada and Canada handles air traffic over us in certain parts of the North American continent because it is far more efficient for the system to operate in this way.

This is the nature of air transportation. Now in surface modes—and I am not too familiar with some of their problems—they can operate without the requirements of the same degree of flexibility.

Q From the standpoint of regulation or control, what kind of requirements are imposed by the character of [350] air transportation?

A Well, I think General Von Kann made a very good statement when he said it had to be at the national level and it required a uniformity.

For example, if we were faced with a situation whereby an ordinance were imposed at Kennedy such as the Hempstead case, if you had a proliferation of different ordinances all addressing themselves to the same basic problem, noise abatement of different character, of different decibel readings and it would be permitted, there would be utter chaos.

And you have to have one authority that is responsible for the over-all picture in terms of regulations, air traffic management, certification of aircraft and airmen, engines. It is all part of an over-all picture.

Q You refer to air traffic management. What do you include within that concept?

A Air traffic management to me means not only the actual control of the traffic by the controller but it is all of the mechanisms that makes it possible; the facilities, the center facilities, the navigation aids which are

the radio aids, the instrument landing systems, the marker beacons, compass locaters, and so forth. It's the actual communications facilities through which the pilot and the controllers speak to each other.

[351] It's a massive complex, all of which is directed to the movement of air traffic in an efficient way.

Q And permissible hours of flight, is that included within the concept of airspace management?

A No, sir—well, with one exception. Under certain conditions there have been restrictions imposed by the Federal Government for a military exercise, and that's about the only instance I have known where hours of flight were specified in air traffic.

Q Do you think the imposition of a night curfew has a bearing on the concept of airspace management?

A Very definitely.

Q In what respect?

A It's a deterrent to the efficient use of the airspace.

MR. CHRISTOPHER: No further questions.

THE COURT: Cross-examine.

Are those three airports with which you are concerned owned by—well, are they publicly owned or privately?

THE WITNESS: Yes, they are.

THE COURT: All publicly owned?

THE WITNESS: Technically the two New York airports are owned by the City of New York and leased by the Port of New York Authority.

[352] THE COURT: I see.

THE WITNESS: And in the case of Newark, it is owned by the City of Newark and also leased by the Port of New York Authority. But they would come under the definition of a publicly owned facility.

THE COURT: As distinguished from the type of ownership we have here with Hollywood-Burbank being owned by Lockheed?

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. SIEG:

Q Mr. Pyle, I might have missed it in your earlier testimony, but who exactly supports the Aviation Development Council?

A The airlines serving New York City. Now, sir, I must explain by that this includes not only the American flag carriers but all the foreign air carriers that come in such as Lufthansa, BOAC, Air France and so forth. Then also the Port of New York Authority, which is the operator of the three New York airports.

Q You say also. They support you?

A Yes. As the budget is allocated 25 percent is paid by the Port of New York Authority and 75 percent is allocated among the airlines based on the landing fee formula.

[353] **Q** What service do you render the Port of New York Authority?

A Well, I think I tried to cover that in my answer to other counsel which was that we work on various problems to improve the air commerce to the city and serve the City of New York with due regard to some of the problems that this service creates. Community relations, specifically.

Q You are sort of a public relations agency for the Port Authority?

A No. They have their own public relations, sir. No. I am not in the public relations field as such. I would prefer—and I don't mean to be quibbling—I would prefer to call it public education.

We work more closely with the communities, civic associations, that kind of thing.

It's not PR, classic; PR with the media. I don't know whether this is meaningful. But this is our approach.

Q What exactly stimulated this report dated May 10, 1966, which you addressed to the Honorable Mario J. Cariello?

A Cariello.

Q It is in evidence as Exhibit 55.

A I think the specific instance that concerned me was the statement that he made publicly that he would do [354] all in his power to institute some kind of restriction on night operations from the hours of 12:00 to 7:00 a.m. This was made some time during the late fall or winter of 1965-66, which preceded this period.

So we immediately went to work with that threat over our heads.

Q Were the Cedarhurst case and the Hempstead case in progress at that time?

A The Cedarhurst case had been determined, if I recall correctly. I am not a lawyer, sir, so you will have to bear with me. But if I recall correctly, the Cedarhurst case had been determined. The Hempstead case was in litigation. I believe I am correct.

Q Did you testify in either of those cases?

A No, sir.

Q Have you testified in other cases which you feel that your clients, the group who, as you have indicated, pay approximately 75 percent of the cost of the operation?

A No, I have not.

Q Is this the first case you have testified in?

A Yes, sir.

Q Now, directing your attention to the three airports as you have indicated are under the jurisdiction or at least under the control of the Port of New York Authority, are you familiar with the detailed operations insofar [355] as the Port of New York Authority is concerned, what they do in reference to providing rules and regulations for the use of those airports?

A Would you be referring to the tariff and the conditions?

Q I am thinking in terms of rules and regulations at the moment.

A I am in general familiar with them, yes.

Q Yes.

A Yes, sir. This is—I might explain, though, that this is a relationship between the individual carrier and the airport operator with which we do not get involved. I just want to be sure you understand.

Q Well, let me ask you this: Maybe I misunderstood. Is the Port of New York Authority the airport operator of the three airports which you mentioned?

A Yes, it is.

Q Now, you are aware, I assume, that the Port Authority has imposed noise limitations on aircraft using the airport?

A Very definitely.

Q What are those limitations?

A Well, the basic limitation is an aircraft shall not exceed 112 pndb at the monitoring point, which is—I guess could be best described as placed at the nearest—at [356] the point nearest to the runway where there is a residence. In other words, at the end of the Runway 31 left at Kennedy there are some houses about a mile and a half out. There is a monitor at a

point which approximates the closest house to the end of the runway.

A Do I make myself clear?

Q Yes, I believe you do. Now, you say there is approximately a mile and a half between the—

A I believe that's—

Q —end of the runway and these residences?

A A mile and a half or a mile.

Q Somewhere in there. Over a mile?

A Between a mile and a half or two. I don't remember the distances in each case.

Q What occupies that space in between?

A As I recall, it's marsh and open water.

Q And the reading is taken at the point or near the point where these residences are located?

A Yes, sir.

Q May I inquire, if you know, who owns this area, this no-man's land that you have indicated between the—

A I think it is open water and marsh land. There is no development there is no—I think the only way you could put anything in there would be to fill it.

[357] Q Well, are you indicating that the closest residence, then—we are speaking of what? The Kennedy Airport?

A Yes.

Q The closest residence to that airport is something between a mile or a mile and a half and a mile and three-quarters?

A On that particular runway. Runway 22 left, I would say there are houses almost—about a mile from the threshold of the runway.

Q When you say threshold, is that the—

A The start of the runway.

Q Start of the runway.

A This is in approach.

Q Are you familiar with the runways at the Hollywood-Burbank Airport?

A No, sir; I am not.

Q You have never seen them?

A Well, let me, sir—to be truthful, I have flown in there three times, I believe, as a pilot, twice late at night and as a result I am not too familiar with it.

Q Based on the background that you have had in aviation, and assuming you had the authority to approve or disapprove, would you believe that a runway which terminates very close to the airport property and is within one-quarter of [358] a mile of residences would be not subject to regulation in some form, either noise or other means to prevent a nuisance to the adjoining residents?

A Can I rephrase that question?

MR. SIEG: You may. It is pretty involved.

THE WITNESS: So I understand it. Are you asking me—and I am not trying to put words in your mouth. Are you asking me as to whether I feel a runway of the type you have described, which I would gather is within a house—residences within a quarter of a mile of the airport should have some regulation as to its use?

BY MR. SIEG:

Q As to the noise level or some other regulation that would give the adjacent residents some relief.

A No. My approach would not be along those lines as to whether or not there should be a regulation with respect to noise. I would be concerned as to the safety factors, the intrusion of housing, buildings, chimneys, TV antennas into the flight path of the aircraft.

However, it would seem to me that in that particular case there is a responsibility with respect to the use of that land.

THE COURT: The runway land or the land—

THE WITNESS: No. In the sense of the airport.

[359] BY MR. SIEG:

Q A responsibility for the use of the land outside the airport?

A Outside the airport.

Q Whose responsibility?

A Well, I would think that would have to be a municipal responsibility.

Q Even though the airport is privately owned?

A I don't think the ownership of the airport has anything to do with it.

Q What you are really indicating is somehow the City of Burbank should acquire that land for the private use of Lockheed; is that what you are saying?

MR. CHRISTOPHER: Your Honor, I object to that as calling for testimony that is not relevant to any issue in this case. I have let Mr. Sieg go very extensively on this line. But the questions regarding other regulations or regarding what the City of Burbank should do in some other respect are not in issue here. This is argument, I believe, your Honor.

THE COURT: Yes, it probably is. But he has got so far into it now that I think he ought to be allowed to finish it. Because he has already said what he thinks should be done. Now Mr. Sieg is just elaborating on the question that's already been answered.

[360] So I think he should be allowed to explain. Objection overruled.

THE WITNESS: Could you restate that?

MR. SIEG: Could the reporter read it?

[361] THE WITNESS: Could you restate that, please?

THE COURT: I think you had better restate it. It saves lots of time and I find it is more expeditious.

MR. SIEG: Very well.

Q My question was almost in the form of an answer, but I will try to rephrase it in the form of a question.

If I understood the previous answer, you are saying, in effect, that the City of Burbank should acquire that land for the benefit of Lockheed, a private corporation, is that right, to land outside the boundaries?

MR. CHRISTOPHER: I renew my objection to that question.

THE COURT: Yes. The objection is overruled in the circumstances here. We have gotten into this now.

THE WITNESS: I would not be qualified to comment on that. My simple statement was that I feel there is responsibility on the part of the municipality—

THE COURT: Not to let land be developed too close to an airport, is that what you are saying, in general statements?

THE WITNESS: Yes.

[362] THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: And—I will stop there.

BY MR. SIEG:

Q If land is already developed in the vicinity of an airport, and then at a later time the pure jet is introduced, and in this case the testimony is it was introduced around 1965 on a commercial basis, would your answer be the same?

MR. CHRISTOPHER: Your Honor, I will object to that question again and add to my objection that I don't understand the form of the question.

THE COURT: Well, I think we are getting far afield from the issue here, as to what may be the opinion of Mr. Pyle. I can't see that that is going to be the determining factor here. He has given his opinion that he thinks land shouldn't be developed up to an airport.

MR. SIEG: I will withdraw the question, your Honor.

THE COURT: I think we are getting a little far afield. I don't think it is going to answer the question that I am going to have to answer, as to what his opinion might be.

MR. SIEG: That is right. I will conclude my cross examination.

[363] THE COURT: The noise abatement or the limitations on noise you referred to, Mr. Pyle, as having been imposed by the Port Authority in New York, how is that noise abatement accomplished?

Is it by the construction of the engine or is it by the fuel consumption?

THE WITNESS: Your Honor, if I understand your question, sir, the mechanism is a monitor, a microphone, which measures decibels.

THE COURT: Decibels, is that what it measures?

THE WITNESS: Yes, 112 pndb, which is a weighted decibel. It is weighted—

THE COURT: It isn't the one you would say is to hear a voice, it is weighted?

THE COURT: Yes, it is weighted because of certain frequency spectrums.

THE COURT: Yes.

THE WITNESS: This then is reported. Now, what the aircraft company, airline, has to demonstrate to the Port Authority is that they are going to operate a DC-8 stretch or straight or 707 or whatever it may be, has to demonstrate it can operate that at full gross load and not exceed 112 pndb as it passes over the monitor.

This is a part of the agreement or the [364] tenant-landlord relationship, with respect to the airline or the tenant of the airport under which the Port says, "Okay, you can operate that airplane if you demonstrate to us it meets this criteria."

Does that answer your question?

THE COURT: Well, yes, partly. I would assume that you have accomplished some limitation over what the noise was before? You set up this equipment and said, "You have to operate within a certain number of decibels"?

THE WITNESS: Yes, I think the answer is—

THE COURT: You have improved it.

THE WITNESS: Yes, we have.

THE COURT: You have lowered it from what it was before this rule went on.

THE WITNESS: Well, if I could go back in the history to answer this a little bit.

Mr. Austin Tobin, who is the executive director of the Port Authority, came to me when I was in the CAA and told me the concern he had for the noise from aircraft. This was in 1955—'56. I had just come into the CAA.

It was out of this conversation that the suppressors to which Mr. Von Kann referred this morning were born, because the straight turbo jet aircraft—for example, [365] the KC-135 has a straight jet, no sup-

passer on it. The Port Authority won't let them within
ten miles of Kennedy Airport.

THE COURT: When was this rule imposed, this
limitation?

THE WITNESS: It was imposed at the time the jets
came in and it was a part of the contract between
each airline and the Port Authority in 1958.

THE COURT: I was laboring under the impres-
sion this was something more recent.—

THE WITNESS: No, sir.

THE COURT: —and somehow you had required
them to limit the noise and that they were able to do
it and I was wondering how they did it.

I understand now that this rule came in, and as a
result of this rule the suppressors were put on the
turbo jets.

THE WITNESS: Basically, basically. The rule came
after the suppressors, but the airlines were on notice
that they would have to meet this requirement and
they went to the manufacturers and the manufacturers
designed the suppressors and—

THE COURT: There has been no limitation of noise
in the last five or six years?

THE WITNESS: At the New York airports?

[366] THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: No reduction in what it was as
limited in—when?

THE WITNESS: 1958.

THE COURT: You have required no further limi-
tation—

THE WITNESS: No.

THE COURT: —than that imposed then?

THE WITNESS: No.

THE COURT: And that limitation was complied with by virtue of the suppressors, in essence?

THE WITNESS: That is correct. And when we finally—when the carriers adopted the turbo fan, which is the type of modified jet engine, to which General Von Kann referred, they were able to achieve this 112 pndb or not to exceed it with the turbo fan without any modification.

The very nature of the engine plus the additional thrust that it had made it possible to meet these requirements.

THE COURT: All right. Anything further?

MR. PACKARD: Yes, there is one question I would like to clear up.

You referred to the fact that the KC-135 [367] did not have the suppressors, and that is a military version of the 707, is it not, sir?

THE WITNESS: Yes.

MR. PACKARD: And that is a military plane.

THE WITNESS: Yes.

THE COURT: Anything further, now?

MR. CHRISTOPHER: Yes.

REDIRECT EXAMINATION

BY MR. CHRISTOPHER:

Q Among the types of noise abatement techniques or procedures, what is your estimate of the value of preferential runways as a noise abatement technique?

A Well, with respect—let me respond by pointing out that in our case the preferential runway system is one of the most important factors in noise abatement that we have, the single most effective weapon we have in noise abatement.

THE COURT: You run them out over the water first and then run them down the coast or up the coast

as they don't come over the city, is that what you are saying?

THE WITNESS: Basically, your Honor, but it gets very complex. There are many, many versions of this and there are many reasons why it cannot be put in, certain weather conditions, wet runways, and so forth.

But the idea is to keep the aircraft from [368] overflying residential areas to the maximum extent possible. That is a very simple statement.

THE COURT: Yes.

MR. CHRISTOPHER: Your Honor, I would like to hand Mr. Pyle a copy of Exhibit in evidence No. 30, which is the noise abatement order which is effective at Hollywood-Burbank Airport, and ask him to read aloud paragraph 5c.

THE WITNESS: "Traffic and weather permitting, use runway 25 for departures of turbine powered aircraft as much as possible during period from approximately 2300 to 0700 local time when people are asleep (residential area is less dense and further from end of runway west of 25 than south of 15)."

BY MR. CHRISTOPHER:

Q Now, is that a version of a preferential runway procedure?

A I would so interpret it.

Q And without trying to get too deeply involved in the Burbank situation, would you think that there would be value in that kind of a procedure, if it got the planes out over a relatively uninhabited area?

A Very definitely.

Q In the course of your testimony, Mr. Pyle, [369] you said you did not recall any instance of the limitation of hours of flight being imposed by federal au-

thorities, except perhaps for relationship with military flights.

In that connection I would like to call your attention to Exhibit No. 48, which is the high density traffic airport rules, subparagraphs (a) and (b) of Paragraph 93.123.

Your Honor, this is on page 3 near the bottom of that exhibit.

THE COURT: Which column is it?

MR. CHRISTOPHER: 93.123, and it starts in the middle.

THE COURT: I see it, the middle column.

THE WITNESS: That is (a) and (c)?

BY MR. CHRISTOPHER:

Q No, (a) and then it comes over here to (b).

A "Each of the following airports is designated as a high density traffic airport, and, except as provided in Paragraph 93.129 and Paragraph (b) of this section, or unless otherwise authorized by ATC, is limited to the hourly number of allocated IFR operations (takeoffs and landings) that may be reserved for the specified classes of users for that airport:"

[370] Then there is a table.

Q Will you read out the table as well as you can?

A The table is entitled "IFR Operations Per Hour."

"Class of user" and then it has "John F. Kennedy Airport" and I think I ought to go through John F. Kennedy Airport first.

Air carriers except air taxis are allocated 70 operations. Scheduled air taxis five and other six.

Q That is operations per hour?

A Per hour, yes.

La Guardia Airport, 48 for air carriers, scheduled air taxi six and other six.

Newark Airport, 40, scheduled air taxis 10 and other 10.

O'Hare Airport, 115, scheduled air taxis 10 and other 10.

Washington National Airport, 40 for air carriers, scheduled air taxis 8 and other 12.

"(b) The allocations of reservations under paragraph (a) of this section among the several classes of users do not apply from 12:00 midnight to 6:00 a.m. local time, but the total hourly limitation remains applicable. The allocations of reservations under [371] paragraph (a) of this section at John F. Kennedy Airport do not apply from 5:00 p.m. to 8:00 p.m. local time. During those hours, the total 80 reservations are allocated to air carriers except air taxis. In the case of Washington National Airport only, the allocation of 40 reservations under paragraph (a) of this section does not include extra sections of scheduled air carrier flights, charter or other non-scheduled flights of scheduled or supplemental air carriers which may be conducted without regard to the limitation of 40 reservations. Any reservation under paragraph (a) of this section allocated to, but not taken by, scheduled or supplemental air carriers operations is available for a scheduled air taxi operation. Any reservation under paragraph (a) of this section allocated to, but not taken by, an air carrier (scheduled or supplemental) or scheduled air taxi operation is available for other operations."

[372] Q. Mr. Pyle, you are generally familiar, aren't you, with high density airport rules?

A. Yes, I am.

Q In view of those, and having recalled them, having read them out, would you not want to add that as an instance in which the Government has imposed a limitation on the hours of flying?

A Well, I would consider it more—and this is not to quibble—but I would consider it more an allocation on operations during certain periods of the day. It addresses itself to the question of peak-hour operations.

In order to prevent delays and to eliminate congestion, they have to be spread. They cannot run more than a certain number of operations.

Q So you would be saying, then, that the Federal Government does and has gotten into the area of limitation on operations at least in this instance?

A They certainly have, without question.

Q Would you consider that as an aspect of air-space management?

A Absolutely. That's the whole intent of that regulation.

MR. CHRISTOPHER: No further questions, your Honor.

THE COURT: All right.

[373] Anything further, now?

MR. SIEG: No, your Honor.

THE COURT: Very well. We will take our afternoon recess now for about ten minutes.

Is Mr. Pyle excused?

MR. SIEG: Yes, your Honor.

MR. CHRISTOPHER: Yes, your Honor.

THE COURT: Thank you.

(Recess taken.)

THE COURT: Very well. Call your next witness.

MR. CHRISTOPHER: Your Honor, the intervening plaintiff and, I believe, the plaintiffs are ready to rest and do so, your Honor.

MR. TYLER: That is correct, your Honor.

THE COURT: Proceed.

MR. SIEG: Your Honor, the defendants would like to call as their first witness Mr. Lemmer.

THE COURT: Very well.

ROMAN LEMMER,

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Please state your name for the record.

[374] THE WITNESS: Roman Lemmer, R-o-m-a-n L-e-m-m-e-r.

DIRECT EXAMINATION

BY MR. SIEG:

Q Will you state your business or occupation, please, Mr. Lemmer?

A I am chief controller of the Hollywood-Burbank Tower working for the Federal Aviation Administration.

Q How long have you occupied that particular position?

A Since November 1965.

Q Where were you prior to that time?

A Prior to that time I was in our Western Regional Office on West Manchester in Los Angeles.

Q Will you describe to the court the nature of the duties of your present position?

A Well, we have the primary responsibility of providing traffic control, separation of aircraft and expediting the movement of aircraft at Hollywood-Burbank Airport as far as IFR and non-IFR aircraft are concerned, and the movement of IFR or instrument flight aircraft in and out of Van Nuys Airport.

And a certain percentage of the overhead traffic that flies in and out of the Los Angeles International.

[373] Q In the course of the—

THE COURT: I don't believe the record shows what IFR is.

THE WITNESS: IFR is instrument flight rules.

THE COURT: Yes.

BY MR. SIEG:

Q I will pursue that just a little further. Which is the IFR runway at Hollywood-Burbank Airport?

A The reference of IFR runway is generally applied to the runway of an airport that is best equipped with air navigation aids for landing under those conditions, and at Hollywood-Burbank Airport that happens to be Runway 25—correction—Runway 7.

Q Runway 7?

A Right.

Q This is for the landing of aircraft?

A That's for the landing of aircraft under minimum weather conditions. There are circumstances under which IFR aircraft can land on other runways than the IFR runway.

Q But, generally speaking, Runway 7 is the runway used for this purpose at Hollywood-Burbank?

A That is correct.

THE COURT: And 7 is west to east?

[376] THE WITNESS: Landing from west to east on the east-west runway.

BY MR. SIEG:

Q Now, while that Runway 7 is being used for that purpose can Runway 25 be used for landing or takeoff of aircraft?

A No, it cannot.

Q Now, reference has been made throughout these proceedings to an order.

THE COURT: Before we leave that, you say when it is being so used. You mean when it is being used for instrument landing?

THE WITNESS: That's right.

THE COURT: Well, how—

THE WITNESS: You cannot land or take off in the opposite direction, which is the way I understood the question he asked.

THE COURT: Yes. It is used for instrument landing only in bad weather?

THE WITNESS: Not necessarily. Generally, yes. This is generally true, yes.

THE COURT: How much of the time is it used for instrument landing? See, I am at sea. When you say 25 can't be used when it used for instrument landing, that doesn't mean much to me unless I get some idea of the [377] period of time that it can't be used, that 25 can be used, because 7 is being used for instrument landing.

THE WITNESS: I would say that Runway 7 is used for instrument landings perhaps about 12 percent of the time, 12 to 15 percent of the time.

MR. CHRISTOPHER: Your Honor, may I ask for a clarification of that? He said 12 or 15 percent of the time. Does he mean 12 to 15 percent of the landings?

THE WITNESS: Okay. I'll qualify it.

THE COURT: The time, he said.

THE WITNESS: That perhaps should be clarified. I would say, taking our total operations as 100 percent, the utilization of the runways on 100 percent basis, 12 percent of that utilization or 12 to 15 percent are landings on Runway 7.

MR. SIEG: Does your Honor wish to pursue this?

THE COURT: No, no, I'm finished. Excuse me.

BY MR. SIEG:

Q Reference has been made, as you probably noted, through these proceedings to an order issued by you, dated September 4, 1969. It is numbered BUR 7100.5B. Are you familiar with that order, Mr. Lemmer? It has reference to Informal Runway Use Program—Noise Abatement.

[378] THE COURT: Is that 48, Exhibit 48?

MR. SIEG: No, your Honor. This is 30.

THE COURT: 30. Exhibit 30.

BY MR. SIEG:

Q Did you answer the question?

A Yes. I am fairly familiar with it. I don't know it verbatim, but I am fairly familiar with the contents.

Q Will you indicate what caused you in particular to issue this order in place of the previous existing order?

A If I remember correctly, the changes in that order over the previous one were primarily a request that we utilize Runway 7 more often for landings of large turbojet aircraft whenever traffic and weather permitted.

THE COURT: 7 or 25?

THE WITNESS: 7 for landing.

THE COURT: I see.

THE WITNESS: And in addition to this, to use Runway 25 for takeoffs between 11:00 p.m. and 7:00 a.m. as much as practicable, weather and traffic permitting, so as to send our departures out during those hours westbound rather than southbound over the residential area to the south from which quite a few complaints were being generated.

[379] BY MR. SIEG:

Q At whose request was this?

A We did that on our own initiative. I instituted this because it is my responsibility—part of my responsibility to control the traffic in a manner that will create the least amount of disturbance to the community.

Q What I am trying to get at, Mr. Lemmer, is the real motivation. What inspired this? What was going on at the time that caused you to take this action?

A Well, we were receiving an increase in the complaints from the people living south of the airport on operations during late hours and at times when possibly we could depart aircraft on some of the other runways.

THE COURT: You say getting increased complaints from the south?

THE WITNESS: South, to the north-south runway,

THE COURT: Yes.

[380] Q What, if any, effect did this directive have as to complaints after it was placed in effect by you, Mr. Lemmer?

A About the only change that I would be able to discern is that we have an increase in the complaints we are getting from the people living west of the air-

Q This would be in the West Hollywood area?

A It would be the North Hollywood area.

Q I am sorry, the North Hollywood area.

A Yes.

Q To what degree was your directive on this noise statement, as to the use of Runway 25 for taking

off? To what extent was it observed by the pilots who

took off during this period from 11:00 to 7:00 a.m.?

A We had very, very good cooperation on the part of the pilots, when we did assign the runway.

Q You mean when you assigned the runway—

A That is right.

Q I take it from that that you weren't always able to assign the runway.

A There were a few occasions where we had wind conditions, say, during those hours that precluded an aircraft taking off to the west. We had an easterly flow of wind—or southeasterly flow of wind, I should say, which would require takeoff on Runway 15 to the south.

[381] THE COURT: Runway 15 to the south?

THE WITNESS: Sometimes during those hours, particularly toward morning, we have an increase in the intensity of the wind and the direction normally at that time of the morning is southeast or east-southeast, which meant if an aircraft took off to the west on Runway 25 you would be taking off with a tail wind and this, of course, is an unsafe practice.

THE COURT: You issued this order to use 25 when possible for takeoff because there was less populated area to the west than to the south?

THE WITNESS: We felt that on just a casual observation of an aerial photograph it appears, from a practical standpoint, there is somewhat more open space to the west than there is to the south.

THE COURT: That was the reason—

THE WITNESS: That was the reason.

THE COURT:—for making it a preferential take-off runway.

THE WITNESS: That is right.

MR. SIEG: I am talking generally now.

Q You say this was a casual observation from an aerial photograph.

A In other words, my responsibility is to try to reduce the community of the noise in whichever way I [382] may find and want to do so. Searching for ways and means to probably reduce the number of complaints, it appeared that by using that runway during such times we might reduce the complaints from west to the airport.

Q Unfortunately it didn't have the effect, it just shifted the area of complaint, is that right?

A The number of complaints we get from the south appears to be still about the same. We have had an increase in complaints from the west.

Q Now, we have had some other discussion, and I hope you can clear this up, Mr. Lemmer, what is the preferential runway at Hollywood-Burbank Airport?

MR. CHRISTOPHER: Your Honor, may I ask for a clarification of that question, as to what time.

THE COURT: You mean as to what time of day or what?

MR. CHRISTOPHER: Yes. Does he mean a preferential runway in the daytime or a preferential runway at night?

MR. SIEG: I am talking generally now.

THE COURT: You can get to it later. Go ahead. The objection is overruled. If you understand the question.

THE WITNESS: I believe I do.

I would like to make a statement first.

[383] The fact that in our business we do not use the term "preferential runway" any more. The Federal Aviation Administration dropped that terminology.

I believe it was in late '67, and in lieu of that use the phrase "noise abatement runway". But from the way the word has been used throughout this hearing, I would on the basis of the assumed definition of it, I would say that our preferential runway is the north-south runway. Taking off to the south and landing to the south under circumstances where an aircraft does not require to land on Runway 7 because of instrument flight rule conditions, and under circumstances which would preclude their taking off or landing on 25 because of the wind conditions.

THE COURT: I don't know whether I am clear or not. You say that No. 7 you consider—that is the one north to south—you consider as a preferential take-off runway?

THE WITNESS: Maybe I don't understand what you people mean by "preferential," because we don't use the term.

THE COURT: They are using it here as preferential for abatement, I assume. At least that is what your order was—

THE WITNESS: My order has no "preferential" phrase in it, as such.

[384] THE COURT: No, but wasn't that the concept of your order?

THE WITNESS: Yes.

THE COURT: I think that is the concept that has been used here. When they say "preferential" they are talking about from an abatement standpoint.

Does anybody disagree with that?

THE WITNESS: The way we use it—

THE COURT: Let's find out how the lawyers have been using it.

MR. PACKARD: I think that is what he stated, that when they use the term "preferential"—

THE COURT: It is used from an abatement standpoint, isn't it, Mr. Christopher?

MR. CHRISTOPHER: Noise abatement runway I would regard as a preferential runway.

THE COURT: Yes, that is the way it has been used.

THE WITNESS: The way we use it is between the hours of 11:00 and 7:00, traffic and weather permitting the pilot is asked to use that runway. If he did not want to for some reason, we would tell him, "This is the noise sensitive runway," which in effect, yes, you can say indicates as being the preferential runway.

In the old days when they used "preferen- [385] —I will explain because maybe I am confused a little bit. We used to have a system they called preferential runway and you assigned to a pilot first the runway that was least noise-sensitive, and then next in sequence to one that is more sensitive, and so forth, to one that is most sensitive, which you would use last, and this was called a preferential runway system.

THE COURT: I think that is what they are talking about here. The preferred runway would be the one least objectionable from a noise standpoint.

THE WITNESS: Wind and weather permitting.

THE COURT: Wind and weather permitting.

THE WITNESS: Okay.

THE COURT: That was 25 for takeoffs, wasn't it?

THE WITNESS: 25 for takeoffs, yes.

THE COURT: Yes. All right. That was the preferential runway, weather permitting, for takeoffs, 25.

THE WITNESS: All right.

THE COURT: All right. Go ahead.

BY MR. SIEG:

Q Which runway do the pilots generally most prefer to take off on?

A We are getting in now to conditions depend-
[386] ing upon the wind again. Normally we have wind out of the southeast—prevailing wind is out of the southeast at Hollywood-Burbank, which requires the takeoff on Runway 15 to the south. This exists most of the time. That is what we call our prevailing wind runway.

Q Where a pilot indicates that he wishes to take off on Runway 15, regardless of the time of the day or night, you do not require him to take off on another runway?

A It is usually the other way around. We assign a runway to the pilot and he indicates whether he accepts it or not. They rarely indicate to us a certain particular runway that they desire to use.

Q You say they rarely do?

A They rarely do, yes. We will assign the runway and then they will usually indicate whether or not it is acceptable.

Q If they say it is not acceptable to them, you assign another runway when available, that, is, Runway 15, if they request it.

A Are you talking about them refusing to accept 25, now, is that what you are saying?

Q Yes, that is right.

A This would be true. If there was no wind and that was a factor, and they refused 25, we would give [387] them 15.

THE COURT: Does that ever happen, that when you assigned 25 that they refused it?

THE WITNESS: It has happened on a few occasions, and these particular occasions were a situation where it was a long flight, a heavy load of fuel and the runway with a calm wind condition is not as good a runway from a safety standpoint as 15 is, for the simple fact that 15 is downhill, it is 900 feet longer and gives the pilot better advantage. There have been a few instances where they required 15 for that reason, and this is understandable.

BY MR. SIEG:

Q Has there ever been a situation where you had to require reduction in the load on the aircraft before permitting them to take off because of this shortness of the runway?

THE COURT: Which one are you talking about now?

MR. SIEG: Either, any.

THE COURT: Any, all right.

THE WITNESS: We do not require reduction, but there have been instances where the carriers have had to reduce their load because of wind and temperature conditions.

[388] The middle of summer, on a hot day, with a calm wind, they cannot take off with as heavy a load as they can under other conditions. That has happened.

MR. SIEG: Your Honor, may I address the court on a matter?

THE COURT: Yes.

Before we leave, could I ask, most of the inflights come in on, let's see, 15—the takeoffs are on 15 and North to south and east to west.

THE WITNESS: Most takeoffs are on those two ways, yes.

THE COURT: So the inflights are in the opposite direction.

THE WITNESS: No, they are the same direction, because you land and take off into the wind.

THE COURT: It's the same direction. So they don't take off, then, west to east where they would go over the City of Burbank.

THE WITNESS: Not too often. There are times we have strong east wind and we have had no choice.

THE COURT: Generally speaking, they go directly over North Hollywood when they are on 7, and—

THE WITNESS: 25, you mean.

THE COURT: Yes, 25. Then on 15 they are over Burbank—

[389] THE WITNESS: They are over Burbank for a short time depending if they are going west. They are over Burbank longer if they are going east or south.

THE COURT: If they are going east, is there any instruction as to how far south they fly before they make their turn?

THE WITNESS: Well, it was brought out earlier in the hearing here the air carrier aircraft which we are concerned with are required to fly on instrument flight rules flight plan. If they are going east or southeast the majority of those flights are assigned an airway which we identify as Victor 186, which originates over Van Nuys, running southeastward, and to join that airway they have got to make a left turn after takeoff within a half mile to a mile, depending on the technique and the power used with respect to the load and type of aircraft he has got.

The airway passes approximately a mile south of the airport. It runs west-northwest to east-southeast.

[390] THE COURT: A mile south of the airport?

THE WITNESS: Approximately a mile south, yes. It runs at an angle.

THE COURT: And it runs west-northwest?

THE WITNESS: Runs roughly from Van Nuys Airport to over the City of El Monte.

THE COURT: Yes. It runs roughly along those tracks? Just south of the Southern Pacific tracks lettered here on Exhibit 1?

THE WITNESS: Just about that direction, but a mile bit further south.

THE COURT: South of the tracks but just about that direction?

THE WITNESS: That direction, correct.

THE COURT: But a mile south of that?

THE WITNESS: Yes.

THE COURT: Excuse me, Mr. Sieg. Go ahead with your new subject. I wanted to ask him that before I left the subject.

MR. SIEG: At the time of my being shown the exhibits that were proposed to be introduced in evidence by the plaintiff, which was a week ago last Friday, the defendants had and proposed to offer into evidence a report made by the City Manager of the City of Burbank with respect to the general aircraft problems and the situations, containing [391] pictures, some diagrams and general informative material.

At that time I agreed that it could be offered in evidence. And I actually offered to provide the plaintiffs with a copy that was in better condition than the one that they showed to me.

On Monday of this week and the day prior to this I found and was served with a revised list of exhibits which eliminated this report. I believe it is of some assistance in this matter. Particularly I would like to ask Mr. Lemmer questions regarding some of the material that he provided for this study.

I would wonder at this point in time if there is any objection on the part of the plaintiff that this report of the City Manager be introduced in evidence as a defendants' exhibit.

MR. CHRISTOPHER: Objection, your Honor, on the ground of hearsay.

THE COURT: Well, I haven't seen the report. I suppose it is hearsay. There are a lot of reports in here that are hearsay. You have the right to make the objection, certainly.

I haven't seen it yet. Have you got the City Manager who can come in and testify?

MR. SIEG: Yes, sir; I can bring him in in the morning.

[392] THE COURT: If it is his report.

MR. SIEG: It is.

Q Mr. Lemmer, maybe I can at least finish with your portion of the testimony, hopefully.

Did you in connection with a study being made by the City Manager provide his office with a chart showing the schedule of—not the schedule but the number of departures in graph form between the various hours at various times of the day and night as prepared by you?

A We provided them with a chart. However, I believe the chart indicated the total operations per hour. I do not believe it was broken down into arrivals and departures. I could be wrong.

Q That is correct. I am not suggesting it did otherwise. Do you have a copy of this?

I will show it to the witness. I don't have any extras.

MR. CHRISTOPHER: Yes, I do.

MR. SIEG: May this be marked for identification Defendants' B, your Honor? It is entitled Total Operations Per Hour 1968.

THE COURT: Defendants' B.

THE CLERK: Defendants' B for identification.

(The exhibit referred to was marked Defendants' Exhibit B for identification.)

[193] THE COURT: Did you say 1968?

MR. SIEG: Yes, your Honor. May I approach the witness with this?

THE COURT: Yes.

BY MR. SIEG:

Q Mr. Lemmer, I show you Defendants' Exhibit B for identification and ask you if you recall providing the office of the City Manager with this particular chart?

A Yes, I do.

Q Insofar as you know, of your own knowledge it accurately portrays certain flight operations by hour per hour for a day?

A Yes; it depicts the volume of instrument operations by hour for 24 hours and total operations per hour for 24 hours.

Q Over what period of time?

A This is an over-all average for the calendar year 1968.

MR. SIEG: May I offer this in evidence, your Honor?

THE COURT: Let me see it, please.

MR. SIEG: I would like to inquire further of the witness regarding what is set forth in the exhibit.

THE COURT: When you say amount of opera-

THE WITNESS: A month. That is a month.

[394] THE COURT: Amount of operations you mean this is a number of operations when you say amount of operations?

THE WITNESS: Yes. Number broken down by the hour for each hour of the 24 hours.

THE COURT: These are the dates, 1:00 to 2:00?

THE WITNESS: 1:00 to 2:00 a.m., 2:00 a.m. to 3:00 a.m., 3:00 a.m. to 4:00 a.m., 4:00 a.m. to 5:00 a.m., 5:00 a.m. to 6:00 a.m., and so on.

THE COURT: On down to 12:00. Then the afternoon?

THE WITNESS: That's midnight down here.

THE COURT: On the right-hand side is from 12:00 noon until 12:00 midnight?

THE WITNESS: Yes.

THE COURT: What do the dots on the graph indicate? The solid line apparently is indicated as to be total operations. Now what are total operations? Do you mean in flights and—

THE WITNESS: That's arrivals and departures, combined total of the two.

THE COURT: And the broken line is—

THE WITNESS: Instrument.

THE COURT:—instrument operations. Those are the—

[395] THE WITNESS: Instrument flight rule operations.

THE COURT: Instrument flight rule operations which you say are—come in on 7?

THE WITNESS: Part of it.

THE COURT: Yes.

THE WITNESS: Instrument operations actually include instrument approaches and other type of operations on instrument conditions. It is not necessarily the number of instrument landings on the airport.

THE COURT: I see. It doesn't include just the landings, then?

THE WITNESS: No.

THE COURT: Well, when you say total operations, though, the heavy line, is that landings and takeoffs?

THE WITNESS: That's landings and takeoffs at Hollywood-Burbank on that.

THE COURT: Instrument landing does not necessarily mean there was a landing and takeoff?

THE WITNESS: That is correct. It could be an instrument landing on a departure out of Hollywood-Burbank, it could be instrument landing or departure of Van Nuys, it could include instrument operation of aircraft on instruments flying overhead into Los Angeles or out of Los Angeles International Airport.

THE COURT: Now, the total operations, is [396] that limited to Hollywood-Burbank?

THE WITNESS: Hollywood-Burbank only.

THE COURT: All right. B is ordered in evidence.

(The exhibit previously marked Defendants' Exhibit B was received in evidence.)

MR. CHRISTOPHER: Your Honor, if I could have a moment to confer with Mr. Sieg I might be able to withdraw my objection to that exhibit and expedite its examination considerably.

May we have a moment, your Honor?

THE COURT: Surely.

MR. CHRISTOPHER: Your Honor, I believe that Mr. Sieg and I have agreed that he can use such portions of this report as he deems necessary for his examination here and obviate the need to call the witness. I am more than willing to cooperate with those re-

THE COURT: All right. The portion, you say, he needs to use of the report, is that what you are saying?

MR. CHRISTOPHER: That's right. He and I have discussed the portions he needs to use and I will not object when he offers those portions.

THE COURT: Very well. Allright. Go ahead.

[397] BY MR. SIEG:

Q Mr. Lemmer, am I pronouncing your name right?

A Lemmer.

Q Lemmer?

A Right.

Q Mr. Lemmer, would you refer to that exhibit? Are you in a position to indicate to the court whether this approximates the general activity as set forth at the Hollywood-Burbank Airport during 1969?

A Yes. I would say it approximates the level of operations per hour that existed during 1969 up to the present time.

THE COURT: That's as distinguished from the instrument operation?

THE WITNESS: Talking about total operations.

BY MR. SIEG:

Q At Hollywood-Burbank?

A Right.

THE COURT: As distinguished from instrument operations?

THE WITNESS: Yes.

THE COURT: Which includes not only Hollywood Airport but other airports; is that right?

THE WITNESS: Well, I understood him to talk about Hollywood-Burbank Airport. Now the instrument [398] operations as far as this is concerned, the volume level is—this is very indicative of what is going on today.

THE COURT: Well, you see you have two lines on the graph, a broken line and a hard line.

THE WITNESS: Right.

THE COURT: The hard line, as I understand it, concerns the operation in and out, flights in and out of Hollywood-Burbank.

THE WITNESS: Correct.

THE COURT: And it includes instrument flights in and out, Hollywood-Burbank?

THE WITNESS: Right.

THE COURT: But only Hollywood-Burbank?

THE WITNESS: Right.

THE COURT: Then the broken graph concerns instrument operations, not necessarily flights in or flights out, but it includes flights in and out of other airports besides Hollywood-Burbank?

THE WITNESS: This is correct. This graph had been made up to complete our work load.

THE COURT: All right.

THE WITNESS: And we wanted to use—the City wanted to use it, which we let them have a copy.

BY MR. SIEG:

Q Now as to the operations shown—and I am [199] interested in whatever line of that graph shows landings and takeoffs at Hollywood-Burbank Airport only—are you able to give the court any percentages as between landings and takeoffs insofar as the period from 11:00 p.m. to 7:00 a.m. in the morning are concerned?

A Percentages in what respect? To the 100 percent for one day and broken down into what part of that?

Q I am trying to get some idea of what portion of the number of flights or operations is shown during the period I mentioned, 11:00 p.m. to 7:00 a.m. were landings and what portion were takeoffs.

A Well, this is not broken down, as I said before—

Q I realize that.

A —to landings and takeoffs. For purposes of discussion I believe you could take the total volume here and divide it in half and say half are landings and half are takeoffs, would be generally applicable to the situation.

Q Do you mean that would be generally true?

A Yes.

Q Is that what you are saying?

A Yes.

Q Now, can you just, for example, trace on your diagram the operations activities at Hollywood-Burbank, landings and takeoffs from 11:00 to 7:00 a.m. by numbers and for each hour?

[400] A As depicted on this my interpolation would be that the total number of landings and takeoffs—

THE COURT: Between 11:00 p.m. and 12:00 p.m.?

THE WITNESS: 11:00 and 12:00.

THE COURT: 12:00 midnight.

THE WITNESS: According to this I would estimate it would be about five.

BY MR. SIEG:

Q All right. Then 12:00 midnight to 1:00 a.m.?

A 12:00 midnight to 1:00 a.m., this indicates about three.

Q 1:00 a.m. to 2:00 a.m.?

A 1:00 a.m. to 2:00 a.m., I would say it indicates one.

Q 2:00 a.m. to 3:00 a.m.?

A About the same.

Q 3:00 a.m. to 4:00 a.m.?

A This is about still the same.

Q And 4:00 a.m. to 5:00 a.m.?

A Slight increase. Could conceivably be two opera-

Q And 5:00 a.m. to 6:00 a.m.?

A I would estimate four.

[401] Q And 6:00 a.m. to 7:00 a.m.?

A 6:00 to 7:00 appears to be about thirteen.

Q As part of your assistance to the City in investigating and studying this particular problem, did you provide the City with photographs, aerial photographs of this particular area surrounding Hollywood-Burbank Airport?

A Approximately a week ago the airport manager asked me if I had some aerial photographs, which I did, and I presented them to him. What he used them for I have no idea.

Q I am speaking back in 1969, when the City Manager was working on this particular problem, do you recall providing photographs of any kind?

A I don't recall that we did, no.

I believe he obtained photographs from the Lockheed Air Terminal Inc. He did not receive any from

MR. CHRISTOPHER: Your Honor, we have no objection to these photographs if they can be fixed as to within an estimated period of years.

Perhaps if I ask the Secretary of the Air Terminal he will be able to fix a date for them and settle the problem.

Your Honor, we are willing to agree that these [402] photographs were taken some time between 1967 and 1969. They are undated.

MR. SIEG: I have no proof of date other than what counsel indicates.

I might show them to the witness for a question as to whether they basically depict the present surroundings and runways of the airport, if that would also help.

There are two photographs, your Honor, showing different views of the airport.

THE COURT: Want them marked for identification?

MR. SIEG: Yes, please.

THE CLERK: Defendants' C and D for identification.

(The exhibit referred to was marked Defendants' Exhibit C and D for identification.)

THE COURT: You are offering them as depicting what?

You are not offering them now, I know, but—

MR. SIEG: Views of the runways and surrounding areas of Hollywood-Burbank Airport, aerial views.

THE COURT: C and D for identification.

BY MR. SIEG:

Q I show you Defendants' Exhibit D for identification, and would you please examine it and generally state [403] to the court what it depicts, in terms of the Hollywood-Burbank Airport and the surrounding area.

A I would say this depicts southern two-thirds of the north-south runway and all of the Valley area to the south of it, to the Santa Monica Mountains, and roughly the eastern two-thirds of the east-west runway—

THE COURT: Before we get away from the north-south runway, you are talking about 15?

THE WITNESS: Okay, let's say the last two-thirds—all excepting the first third of Runway 15.

THE COURT: All right.

THE WITNESS: And the residential area south of —in fact, the entire San Fernando Valley south of it to the Santa Monica Mountains.

THE COURT: That is depicted as it appears today?

THE WITNESS: I would have no idea whether this is equivalent what it depicts today, because I have not seen a photograph such as this before. This is the first one I have seen it.

THE COURT: You have seen the area, haven't you? Don't you see it every day?

THE WITNESS: No, I don't fly over it every day. This is taken from the air.

THE COURT: I haven't seen it. I thought [404] it was from the runway.

THE WITNESS: No.

THE COURT: This is from the air and not from

THE WITNESS: It is an aerial shot. I probably would have stated so.

MR. SIEG: For the moment we will have to leave to the period that has been indicated, '67 to '69.

THE COURT: Well, when you say the north-south runway, you are talking about the runway depicted on the right-hand side of the photograph, is that right?

THE WITNESS: That is correct.

THE COURT: And you say it is the south two-thirds of it?

THE WITNESS: Right, about the first one-third is

THE COURT: And the continuation of the runway to the south takes it into the City of Burbank, is that

THE WITNESS: That is right.

THE COURT: It is pretty hard to tell from this picture where the houses began.

THE WITNESS: This is right.

THE COURT: All right. Do you know how far [405] south of the end of the runway that the homes do start? Homes are first located how far south of the runway, do you know?

THE WITNESS: I believe it is somewhere in the neighborhood of one-third to a half a mile.

MR. SIEG: I am sorry, your Honor, I put in D before I put in C, but I am showing the witness Defendants' C for identification.

THE WITNESS: This is D. (Indicating.)

MR. SIEG: Right.

Q I ask you if you recognize what it purports to show.

A This is an aerial shot of the entire Hollywood-Burbank Airport, taken, I would estimate, approximately from a point one-half mile southeast of the southeast corner of the airport, looking to the northwest, and consequently it shows the entire San Fernando Valley area northward to the Santa Susanna Mountains, and similarly westward to the mountains—or northwestward, rather, I should say. It is looking northwest and north-northwest from a point southeast of the airport.

Q Does it show all the runways at Hollywood-Burbank?

A Yes, it does.

MR. SIEG: I would like to offer this in evidence, [406] your Honor, and then attempt or at least ask the witness to indicate to your Honor the several runways that we have been discussing.

THE COURT: You are offering C, is that right?

MR. SIEG: Yes.

THE COURT: With the stipulation it was taken some time between 1967 and 1969, is that right?

MR. PACKARD: That is right.

MR. CHRISTOPHER: Yes, your Honor, and there is no objection on that basis.

THE COURT: Very well, with that understanding C is ordered in evidence.

(The exhibit previously marked Defendants' Exhibit C was received in evidence.)

BY MR. SIEG:

Q If you please, would you indicate to his Honor the runways we have been discussing, 15, 7, 25, and I have lost the other one.

THE COURT: 33.

THE WITNESS: 15 is this runway to the south, the takeoffs to the south (indicating), for landings to the south.

33 is the reverse for takeoffs to the north, landings to the north (indicating).

25 for takeoffs to the west or landings to the [407] west (indicating).

Runway 7, landings to the east or takeoffs to the east, in that direction (indicating).

THE COURT: Is there any objection to his marking these on here?

MR. CHRISTOPHER: No.

MR. PACKARD: No.

THE COURT: Anyone looking at the record, it wouldn't mean a thing, as to what he is telling me.

I think if you will put a "15" up at the top here of this one, with an arrow showing that "15" means to the south.

THE WITNESS: All right.

THE COURT: And then to the west a "25"—

THE WITNESS: All right.

THE COURT: And 33.

THE WITNESS: All right.

THE COURT: And the "15" coming down.

(Witness complies.)

THE COURT: And the 7, is that right? The 7 going—

THE WITNESS: This is 25 (indicating).

THE COURT: 25 going east to west. And 7 coming west to east.

(Witness complies.)

[408] THE COURT: That makes it meaningful.

What is the area south of 15, at the end of 15 to the south?

THE WITNESS: The residential area starts south of the cemetery, and it only shows half of the cemetery.

THE COURT: In other words, on the left is the cemetery?

THE WITNESS: No, the cemetery is directly in line with the south end of the runway. It looks like it is west—

THE COURT: But it is on the left of the picture.

THE WITNESS: That is correct.

THE COURT: And the plane goes over the cemetery as it comes down on Runway 15.

THE WITNESS: Right.

THE COURT: And takeoff on 15.

THE WITNESS: That is correct.

THE COURT: And then I think you testified that if the plane is going north, then it circles to the right—to the west?

THE WITNESS: If the departure is destined for south of Los Angeles,—

THE COURT: Yes.

[409] THE WITNESS: —then they make a right turn after they become airborne.

THE COURT: Which is to the west.

THE WITNESS: To the west, right.

THE COURT: If the departure is for the east, why, they make a left turn to the east about a mile south of the end of the runway.

THE WITNESS: That is correct.

[410] MR. SIEG: That's all I have of this witness, Your Honor.

THE COURT: Your other photograph you are not concerned with, is that correct?

MR. SIEG: D is in.

THE COURT: No, I don't think it is in.

THE CLERK: No.

THE COURT: I don't think it is in yet.

MR. SIEG: I'll offer it.

THE COURT: Would you do the same thing on D, mark it showing the arrow 15 so we can tell which direction the takeoff would be on 15? And likewise the arrow coming to the north on 33.

MR. CHRISTOPHER: Again, on this one, your Honor, the closest date that we are able to put is between 1967 and 1969. With that stipulation, we have no objection.

THE COURT: Very well. It is ordered admitted with that understanding.

I don't know whether you want to see these or not now we get the markings on them.

Now, isn't this the cemetery down here? This is 15, 7. The cemetery is toward the top of the photograph where the 33 figure is placed?

THE WITNESS: No. The cemetery lies right [411] in here (indicating).

THE COURT: South of the 33 figure?

THE WITNESS: The 33 figure is over the residential area south of the cemetery.

THE COURT: You don't know the distance of the cemetery, how wide it is north to south?

THE WITNESS: I would say, just estimating, a third to a half a mile.

THE COURT: Very well.

Now, have you finished?

MR. SIEG: I have finished my direct examination. (Defendants' Exhibit D for identification was received in evidence.)

THE COURT: Cross-examine.

MR. CHRISTOPHER: No cross examination, your Honor.

MR. PACKARD: No cross.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Memorandum for Use in Preparation of Proposed Findings of Fact, Conclusions of Law, and Judgment.

Filed: Sept. 24, 1970.

(Title omitted in printing).

The within action is for declaratory relief and injunction whereby the plaintiffs seek to invalidate an Ordinance of the City of Burbank which prohibits the take-off by jet aircraft from Hollywood-Burbank Airport (HBA) between the hours of 11:00 P.M. (2300) and 7:00 (0700), the next day.

The plaintiff Lockheed Air Terminal, Inc., is the owner and operator of HBA. Plaintiff Pacific Southwest Air Lines (PSA) is an intrastate carrier.

The intervening plaintiff, Air Transport Association of America (ATA), is an unincorporated trade association consisting of some 32 carriers commonly known as scheduled airlines. The members of the Association fly approximately 2400 planes, the great majority of which are jet aircraft.

The Federal Aviation Administration (FAA) has filed an Amicus Curiae brief in support of the position of the plaintiffs.

The City of Burbank and certain public officials are named defendants. The People of the State of California (California) filed an Amicus Curiae brief in support of the validity of the Burbank Ordinance (BuOr).

The provisions of Section 1331(a) and 1337 of Title 28, U.S.C., vest this Court with jurisdiction and ven-

The issues of law involved are:

- (1) Has the Federal Government so preempted the fields of the use of air space and the regulation of air traffic as to invalidate and preclude enforcement of the BuOr?
- (2) Is the Ordinance in conflict with Federal statutes or regulations and thereby rendered unenforceable by the Supremacy Clause?
- (3) Would the enforcement of the Ordinance result in intolerable and unreasonable burden on interstate commerce?
- (4) Does the Ordinance constitute an attempted regulation of the phase of the National commerce which, because of the need of National uniformity, demands that its regulation be prescribed by a single authority?

The admitted facts are set forth in the Pre-Trial Conference Order and are as follows:

1. Plaintiff Lockheed Air Terminal, Inc., (hereinafter "Lockheed"), is a corporation organized and existing under and pursuant to the laws of the State of Delaware and is doing business in the County of Los Angeles, State of California. Lockheed, at all times material herein, was and is the owner and operator of the Hollywood-Burbank Airport.

2. Plaintiff Pacific Southwest Airlines (hereinafter "PSA") is a corporation organized and existing under and pursuant to the laws of the State of California and is doing business in the County of Los Angeles, State of California.

3. Intervening plaintiff Air Transport Association of America (hereinafter "ATA") is an unincorporated trade association the members of which include virtually all United States scheduled interstate air carriers. Among its 32 members are the following scheduled air carriers which use Hollywood-Burbank Airport: Air West, Inc.; United Air Lines, Inc.; Western Air Lines, Inc. Among its other members is Continental Air Lines, Inc., which obtained authority pursuant to Civil Aeronautics Board Order No. 70-5-52, issued May 12, 1970, "to engage in air transportation with respect to persons, property, and mail . . . between the terminal point Seattle-Tacoma, Wash., the intermediate points Portland, Oreg., and San Francisco-Oakland-San Jose, Calif. (to be served through the Metropolitan Oakland International Airport and the San Jose Municipal Airport), and the terminal point Los Angeles Ontario-Long Beach-Hollywood-Burbank-Santa Ana-Orange County, Calif. (to be served through the Ontario International Airport, the Long Beach Municipal Airport, the Hollywood-Burbank Airport, and the Orange County Airport)."

4. The City of Burbank is a municipal corporation in the County of Los Angeles, State of California, having power to sue and be sued in its own name;

Dr. Jarvey Gilbert is the duly elected Mayor of the City of Burbank;

Robert R. McKenzie is the duly elected Vice Mayor of the City of Burbank;

George W. Haven, Robert A. Swanson and D. Verner Gibson are duly elected Councilmen for the City of Burbank;

Joseph N. Baker is the City Manager of the City of Burbank;

Samuel Gorlick is the City Attorney for the City of Burbank;

Rex R. Andrews is the Chief of Police of the City of Burbank.

5. The defendants, Gilbert, McKenzie, Haven, Swanson and Gibson, constitute the City Council for the City of Burbank and have the authority to enact and enforce ordinances for the regulation of specified matters within the City of Burbank. Defendant Gorlick and the attorneys within his office have the responsibility of prosecuting violations of ordinances and other misdemeanors within the City of Burbank. The defendant, Rex R. Andrews, as Chief of Police, is responsible for and oversees the enforcement of municipal ordinances including the ordinance here in question.

6. Hollywood-Burbank Airport was dedicated May 30, 1930 and has been in continuous use since that time by both private and commercial aircraft. The Airport provides services to regularly scheduled commercial aircraft as well as to privately owned corporate and general aviation aircraft. Hollywood-Burbank Airport occupies approximately 535 acres, approximately 128 of which are owned by the United States Government. The Airport lies mainly in the City of Burbank and partially in the City of Los Angeles.

7. The City of Burbank has a population of approximately 95,000.

On March 31, 1970 the City Council of the City of Burbank duly and regularly adopted Ordinance No. 2216, which added Section 20-32.1 to the Burbank Municipal Code providing as follows:

"Sec. 20-32.1. Aircraft Take-Offs.

"(a) Pure Jets Prohibited from Taking Off Between 11:00 P.M. and 7:00 A.M.

"It shall be unlawful for any person at the controls of a pure jet aircraft to take off from the Hollywood-Burbank Airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

"(b) Airport Operator Prohibited from Allowing Take-Offs.

"It shall be unlawful for the operator of the Hollywood-Burbank Airport to allow a pure jet aircraft to take off from said airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

"(c) Exception: Emergencies.

"This section shall not apply to flights of an emergency nature if the City's Police Department is contacted and the approval of the Watch Commander on duty is obtained before take-off."

Said ordinance became effective on May 4, 1970. The stated purpose of the ordinance is "to prohibit pure jet take-offs at the Hollywood-Burbank Airport between 11:00 P.M. and 7:00 A.M."

9. The defendant officials of the City of Burbank have publicly announced their intention to enforce the new ordinance.

10. As a result of the process of industrialization and urbanization, almost one out of every twenty people in the United States lives in the Los Angeles county area.

11. Hollywood-Burbank Airport is the most convenient airport for the entire San Fernando Valley, Hollywood, and the cities of Burbank, Glendale, Pasadena, and Alhambra, an area containing a population of over 2.2 million persons.

12. Hollywood-Burbank Airport has two principal runways for the operation of aircraft. These runways are designated by their compass heading in tens of degrees.

(a) The "north-south" runway is situated on an axis of 330° - 150° . This runway is designated Runway 33 when it is used by aircraft taking off to the northwest or landing from the southeast, and, Runway 15 when it is used by aircraft landing from the northwest or taking off to the southeast. Approximately 2,050 feet of the northernmost portion of this runway lie in the City of Los Angeles on land owned by the United States Government.

(b) The "east-west" runway is situated on an axis of 070° - 250° . This runway is designated Runway 7 when it is used by aircraft landing from the west or taking off to the east, and, Runway 25 when it is used by aircraft landing from the east or taking off to the west. Approximately 2,250 feet of the westernmost portion of this runway lie on land owned by the United States Government.

(c) Aircraft landing on Runways 7 and 15 and aircraft departing on Runways 25 and 33 do not overfly the City of Burbank.

13. The following types of pure jet commercial aircraft operate from the Hollywood-Burbank Airport: Boeing 727, Boeing 737, Douglas DC-9. The following types of pure jet business aircraft operate from the

airports: Jetstar, Gulfstream II, Sabreliner, Lear Jet, Bellavilland and Falcon.

14. Each scheduled interstate air carrier that uses Hollywood-Burbank Airport holds a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board which provides as set forth in said Certificate.

15. PSA holds a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission which provides as set forth in said Certificate.

16. Each scheduled interstate air carrier that uses Hollywood-Burbank Airport holds an Air Carrier Operating Certificate issued by the Administrator of the FAA, which provides as set forth in said Certificate.

17. PSA holds a Commercial Operating Certificate issued by the Administrator of the FAA, which provides as set forth in said Certificate.

18. The Administrator of the FAA has issued Operations Specifications to each regularly scheduled air carrier that uses Hollywood-Burbank Airport, which Operations Specifications provide as set forth therein.

19. Air West operates Douglas DC-9 aircraft at Hollywood-Burbank Airport. United has operated and operates the following types of aircraft at Hollywood-Burbank Airport: Boeing 727 and Boeing 737. West operates and has operated Boeing 737 aircraft at Hollywood-Burbank Airport. PSA operates the following types of aircraft at Hollywood-Burbank Airport: Boeing 727, Boeing 737 and Douglas DC-9.

20. Each pilot of a civil aircraft of United States registry operated in the navigable airspace of the United

States is required to have in his personal possession a current pilot certificate issued by the Administrator of the FAA (FAR 61.3(a)). Each pilot of an aircraft operated by a scheduled air carrier at Hollywood-Burbank Airport is required to hold a current air transport pilot certificate issued by the Administrator (FAR 61.161). Each flight engineer of a civil aircraft of United States registry is required to have in his personal possession a current flight engineer's certificate issued by the Administrator (FAR 63.3(b)).

21. Pursuant to newly enacted federal legislation, Hollywood-Burbank Airport is required to apply for an Airport Operating Certificate issued by the Administrator of the FAA pursuant to Section 51(b) of the Airport and Airway Development Act of 1970, Public Law 91-258, Stat. (May 21, 1970), within two years from the date of enactment.

22. The FAA operates the Airport Traffic-Control Tower and Radar Approach and Departure Control at Hollywood-Burbank Airport. In connection with such operation the FAA has expended approximately \$2 million on the installation of navigational aids at Hollywood-Burbank Airport, including the Instrument Landing System ("ILS"), runway and identification lights, and radar and radio equipment.

23. Pursuant to the Federal Aviation Act of 1958, 49 U.S.C. § 1301, *et seq.*, the Administrator of the FAA has determined that there exists a need for a system that will provide adequate separation between and orderly control of the air traffic emanating from points within and without the United States and converging on large metropolitan areas and airports, such as Hollywood-Burbank Airport. Accordingly, the Administrator

has established a system for the control of air traffic which provides for such separation, and which operates within controlled airspace identified as "control zones" and "control areas." Control zones encompass all the airspace from the surface to infinity within five miles of the geographical center of an airport. Control areas are of varying elevations and dimensions, and include the area surrounding Hollywood-Burbank Airport. The airspace within a control zone below an altitude within 2,000 feet above the surface is defined as the airport traffic area (FAR 1.1). Hollywood-Burbank Airport is located under a control area, within an airport traffic area, within a control zone and under many converging Federal airways, all of which have been established by the Administrator of the FAA pursuant to statutory authority. Unless otherwise authorized by FAA Air Traffic Control, a pilot operating within an airport traffic area must maintain two-way radio communication with the control tower (FAR 91.127(b)). He is further required to comply with all clearances and instructions that may be issued by Air Traffic Control (FAR 91.75(b)). Air Traffic Control for the aircraft within the Hollywood-Burbank Airport Control Zone, including approach control and departure control, is exercised by FAA personnel located in the control tower situated at the airport. Except when in direct communication with the control tower, each regularly scheduled air carrier is required to conform its Operations Specifications to operate its jet aircraft in accordance with FAA Instrument Flight Rules ("IFR"). When not under the control of an FAA airport control tower, aircraft operating under IFR are under the direct control of an FAA Air Route Traffic Control Center and are required to comply with the

clearances received from that facility. (FAR 91.115, 91.75(a)).

24. Prior to the commencement of operations involving jet aircraft landings and take-offs on the two runways at Hollywood-Burbank Airport, a determination was made by the FAA that such use of each runway would not be unsafe either to persons or property on the ground or to persons and property in the air.

25. No aircraft may taxi at or take off from Hollywood-Burbank Airport without first receiving an appropriate clearance from Air Traffic Control (FAR 91.87(h)). When a commercial jet aircraft is ready for departure from its terminal gate, it makes radio contact with Air Traffic Control. It is at that time assigned a runway for take-off and is ultimately given clearance to taxi thereto. Prior to taking its position on the runway, the aircraft is given departure clearance, which includes the assignment of departure procedures and assignment of a radio beam intersection to which the aircraft is directed to fly. On receiving its clearance to take off, each jet or other large aircraft is required to conform with all FAA take-off procedures and to climb to an altitude of 1,500 feet above the airport surface as rapidly as practicable. (FAR 91.87(f)) Departure clearances for IFR aircraft incorporate standard instrument departure procedures established for Hollywood-Burbank Airport by the FAA. Pictorial charts showing these standard instrument departure procedures are published by the Department of Commerce, United States Coast and Geodetic Survey. Aircraft taking off from Hollywood-Burbank Airport must conform with the assigned FAA departure clearance including all standard IFR departure procedures incorporated therein (FAR 91.75(a), 91.116). Upon

holding an altitude and position clear of other traffic, control of the aircraft is passed from Hollywood-Burbank Departure Control to the FAA Air Route Control Center located at Palmdale, California.

26. On entering and operating within the Hollywood-Burbank Airport Traffic Area, jets and other large aircraft must be operated at an altitude of at least 1,500 feet except when further descent is required for a safe landing. (FAR 91.87(d)(2)) No aircraft may be landed at Hollywood-Burbank Airport without first receiving an Air Traffic Control clearance (FAR 91.87(b)). In addition to exercising approach control, the FAA maintains and operates an Instrument Landing System ("ILS") which electronically establishes a three-degree glide slope to Runway 7 at Hollywood-Burbank Airport. Each of the aircraft operated by the regularly scheduled air carriers is equipped with electronic devices that monitor the ILS glide slope and depict the glide slope position in relation to that of the aircraft in the cockpit instrument. On receiving FAA clearance to approach for landing, the aircraft is required to be at or above the glide slope at the outer ILS marker and to remain at or above the glide slope until reaching the middle ILS marker. (FAR 91.87(d)(2)) The outer marker is located approximately 6.1 nautical miles from the approach end of Runway 7, while the middle marker is located approximately 1.8 nautical miles from the approach end of the runway. The glide slope altitude at the outer ILS marker is approximately 2,000 feet above the surface and at the middle marker is approximately 575 feet above the surface. As an additional aid of approach control, the FAA prescribes standard instrument approach procedures which are published in Part 97 of the Federal Aviation Regulations. Pictorial

approach and landing charts showing these standard instrument approach procedures are published by the Department of Commerce, United States Coast and Geodetic Survey. Approaches to Hollywood-Burbank Airport conducted under instrument flight rules are required to be in accordance with the standard instrument approach procedures set forth in Part 97 of the Federal Aviation Regulations (FAR 91.116).

27. In the interest of alleviating noise disturbances to the residents of communities adjoining airports located in metropolitan areas, the Administrator of the FAA has established regulations that (1) require turbine powered fixed wing aircraft, approaching for landing, to maintain within the airport traffic area an altitude of at least 1,500 feet above the surface of the airport "until further descent is required for a safe landing," and (2) require such aircraft, when taking off, to climb to 1,500 feet as rapidly as practicable (FAR 91.87(d), (f)).

28. From February 1968 until July 12, 1970, PSA operated a Boeing 727 aircraft which departed the Hollywood-Burbank Airport at 11:30 P.M. each Sunday night destined for San Diego. This was the only regularly scheduled flight taking off from Hollywood-Burbank Airport between the hours of 11:00 P.M. and 7:00 A.M. This was an intrastate flight originating in Oakland, California with its final destination San Diego, California.

29. Since March 9, 1970 PSA has operated a Boeing 727 or Boeing 737 aircraft on charter to Lockheed California Company which aircraft departs from the Hollywood-Burbank Airport Monday through Friday at 6:40 A.M. destined for Palmdale. This flight is being permitted to operate by the City as an emergency flight.

10. Several fleets of corporate jet aircraft use Hollywood-Burbank Airport as their home base. Prior to the enactment of the curfew ordinance, there were at least three flights per week of corporate jet aircraft during the now-prescribed curfew period.

11. Lockheed Aircraft Corporation operates and maintains military defense plant facilities at Hollywood-Burbank Airport.

The plaintiffs urge that the BuOr is invalid for the following reasons:

(a) The preemption of the field of efficient management of the use of the navigable air space by the Federal Government by statute and regulations and through its agencies, FAA and Civil Aeronautics Board (CAB),

(b) The direct conflict between the BuOr and Federal statutes, regulations and Certificates of Public Convenience and Necessity issued to airlines by the CAB, and

(c) The ordinance is an intolerable and unreasonable burden on interstate commerce.

The defendant City of Burbank and its officials and the People of California contend that there has been no preemption in the field of navigable air space control, of limitation of aircraft take-offs by the Federal Government, or its agencies, which would invalidate the BuOr. The City urges that the Ordinance is in reality a "land use" regulation and that Lockheed, as the owner and proprietor of HBA, has the authority to place valid limitations on take-offs of jet aircraft during the curfew and that the City can, in turn, control Lockheed with respect to its land use.

Reliance as to land use is on a statement of the Senate Committee in 1968 to the effect that it was not the intent of the Committee, in recommending the air noise abatement legislation H.R. 3400, to effect any change in the existing apportionment of powers between the Federal and State and local governments and that the authority of units of local government to control the effects of aircraft noise through the exercise of land use planning and zoning powers was not diminished by the bill. S.Rep. 1353, July 1, 1968, U.S. Code, Congressional and Administrative News, 1968, pages 2693-94.

With respect to the Commerce Clause, the defendants argue that in considering the effect of the Ordinance on interstate commerce the Court is limited to the flights out of HBA during the curfew hours and that only the intrastate carrier PSA is involved since that is the only line authorized by the California Public Utilities Commission which has jet aircraft scheduled to take off during curfew. There are privately owned jet planes that fly out of HBA between 11:00 P.M. and 7:00 A.M., but which do not have Certificates of Public Convenience and Necessity from California or CAB.

PREEMPTION.

The House Report 2360, 85th Congress, 2nd Session, on the Federal Aviation Act of 1958, states as to its purpose: "The principal purpose of this legislation is to establish a new Federal agency with powers adequate to enable it to provide for the safe and efficient use of the navigable airspace by both civil and military operations." [Page 3741.]

That Act established the Federal Aviation Agency, now Federal Aviation Administration, in replacement of the then Civil Aeronautics Administration. The FAA

vested with "plenary authority to—(a) Allocate airspace and control its use by both civil and military aircraft."

The Senate Report 1811 on the 1958 Act, after observing that the action of the CAB in its control over airspace allocation and air traffic rules rested for the most part upon " * * * the shifting sands of legal ambiguity", says: "The present legislation proposes to clear away this ambiguity once and for all by vesting unquestionable authority for all aspects of airspace management in the Administrator of the new Agency." The report thereafter states: "The splintering of airspace management in the past through committee and panel negotiation has already been discussed. It is one of the evils which this bill is designed to eliminate. As indicated above, it is for this reason that the bill proposes to vest in a single Administrator plenary authority for airspace management. If such authority is once again fractionalized and made subject to committee or panel decision, the evil will only be continued." In the same report, the Committee observes: "The number of planes seeking their share of our airspace has almost quadrupled since 1938. Furthermore, the larger and faster that aircraft have become, the more airspace is required for each if proper separation is to be maintained."

The defendants rely on *Huron Cement Co. vs. Detroit*, 362 U.S. 440 (1959), as authority for their position that intent to preempt shall not be implied

" * * * unless the act of Congress fairly interpreted is in actual conflict with the law of the State." [Page 443.]

The Supreme Court further observes that in consideration of whether a State law has imposed an undue

burden in interstate commerce, we should be mindful of the fact that the Constitution, when conferring upon Congress the regulation of commerce, did not intend

"* * * to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution.' [Citing cases.] But a state may not impose a burden which materially affects interstate commerce in an area where uniformity of regulation is necessary." [Citing cases] [Pages 443-44.]

The Detroit Ordinance which was upheld by the Supreme Court involved smoke abatement, and had been violated by one of the ships of appellant company duly licensed to operate in interstate commerce under a regulation enacted by Congress. Air pollution is a local problem and the purpose of the Ordinance was to protect the health and enhance the cleanliness of the local community.

The Court concluded that the mere possession of a Federal license did not immunize the ship from the operation of the normal incidents of police power, not constituting a direct regulation of commerce. Furthermore, the Ordinance did not exclude a licensed vessel from the Port of Detroit, "* * * nor does it destroy the right to free passage." [Pages 447-48.]

Applying the rules in the *Huron* case to the case at bar, we must determine whether the Federal Government, as evidenced by the acts of Congress and

regulations involved, intends to fully occupy the field of control of the navigable air space to insure its efficient use. Whether the Ordinance brings to bear an unreasonable burden on interstate commerce is also involved and will be discussed in more detail later in this Memorandum.

The question of intent to fully occupy the pertinent field was considered by the Supreme Court in *Napier v. Atlantic Coast Line Railroad Co.*, 272 U.S. 605 (1926). The Georgia statute there involved required curtains and automatic fire-box doors on locomotives. The Court said that the main question in the three cases which were involved on the appeal was whether the Boiler Inspection Act

"* * * has occupied the field of regulating locomotive equipment used on a highway of interstate commerce, so as to preclude state legislation. Congress obviously has power to do so." [Citing cases.]

The Court said that the Interstate Commerce Commission's Boiler Inspection Act applied to locomotives in interstate commerce even if operated wholly within one State and not engaged in hauling interstate freight. The Act did not require any particular type of fire-box door but the Court said that although the Commission had made no other requirement inconsistent with the state legislation that fact was without legal significance.

"It is also urged that, even if the Commission has power to prescribe an automatic fire-box door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This, also, if true, is without legal significance. The fact that the Commis-

sion has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the Act delegating the power. We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or however different their purpose. [Citing cases.]”

In answering the question as to whether the Federal Government acted with the intent to preempt a field, the Supreme Court, in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947), set forth, in the disjunctive, three tests to be applied:

“So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611; *Allen-Bradley Local v. Wisconsin Employment Board*, 315 U.S. 740, 749. Such a purpose may be evidenced in several ways. (1) The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co. v. Public Service Comm’n*, 250 U.S. 566, 569; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148. (2) Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on

the same subject. *Hines v. Davidowitz*, 312 U.S. 52. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co. v. Railroad Commission*, 236 U.S. 439; *Charleston & W. C. R. Co. v. Varnville Co.*, 237 U.S. 597; *New York Central R. Co. v. Winfield*, 244 U.S. 147; *Napier v. Atlantic Coast Line R. Co.*, *supra*. (3) Or the state policy may produce a result inconsistent with the objective of the federal statute. *Hill v. Florida*, 325 U.S. 538. It is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide. *Townsend v. Yeomans*, 301 U.S. 441; *Kelly v. Washington*, 302 U.S. 1; *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U.S. 177; *Union Brokerage Co. v. Jensen*, 322 U.S. 202." [Underscored numbers (1), (2) and (3) added.] Pages 230-31.

In applying the rules in the *Rice* case, *supra*, to the case at bar, we consider the facts and circumstances here involved.

The terms of the 1958 Federal Aviation Act would appear to encompass the efficient use and control of the navigable air space in all aspects of its use by aircraft. Control was effected of the traffic density by regulation 14 F.C.R. 93.121-31, in limiting the instrument flight rules (IFR) operations in high density airports, Kennedy and LaGuardia (N.Y.), Newark (N.J.), O'Hare (Chicago), and Washington National Airport (Wash., D. C.). In limiting the allocations of

flights as to various classes of aircraft, the number of flights varied during different periods of a twenty-four hour day.

By way of comment on the regulations applying to the above named high density airports, it is reported in Federal Register, Vol. 33, No. 234, page 17896, Dec. 12, 1968—part 93, that the allocation of flights was to provide relief from excessive delays, not to correct safety problems. At page 17897, the FAA Administrator says: “* * * the public interest in efficient, convenient, and economical air transportation requires more effective use of airport and airspace capacity. The authority of the FAA to regulate aircraft operations to reduce congestion is clear. The plenary authority conferred by the Federal Aviation Act to regulate the flight of aircraft to assure the safe and efficient utilization of the navigable airspace is well established by practice and judicial decision.”

Congress and the Administrator are fully cognizant of the problems created by aircraft noise. The administrator on page 17897 of the Federal Register, *supra*, refers to the fact that current scheduling practices reflect that two-thirds of the international passenger flights at Kennedy airport were scheduled to arrive or depart between 3:00 P.M. and 11:00 P.M., but that under the allocations imposed some re-scheduling of these flights might be required. He said that international departures fall off abruptly after 10:00 P.M. and *clearly it would not be in the public interest, considering resultant noise disturbances, to encourage scheduling of more flights at later hours.* The paragraphs 93.121-131 of the regulation referred to above appear on page 17898 of Volume 33, Federal Register, *supra*.

In the instant case, the FAA, on September 4, 1969, issued a noise abatement order for HBA making runway No. 25 a preferential runway for departure from 11:00 P.M. to 7:00 A.M. (Bur. 7100.5B, para. 5c, *infra* Ex. 30). This preference was a noise abatement measure for the benefit of the City of Burbank. See Exhibit A hereto for map including the City of Burbank and showing the location of HBA. This map is a portion of plaintiffs' Exhibit No. 1 herein, to which the Court has added the numbered runways 33 and 25 together with the direction of aircraft approach and take-off on all four runways involved.

Further efforts of Congress to control and abate aircraft noise are encompassed in the provisions of Section 1431, Title 49, United States Code, passed by Congress in 1968 and providing for the FAA Administrator to prescribe such rules and regulations he may find necessary to control and abate aircraft noises and sonic boom.

From the broad scope of Federal statutes and regulations governing and controlling the use of air space and of air traffic, it would appear that Congress intended to centralize full and dominant control of the navigable air space in the Federal Government so as to provide for its safe and most efficient use.

Included in the statutes in this field are 49 U.S.C. §§ 1301(24), 1303, 1304, 1341(a), 1348 and 1508.

It is true that Section 1506 of Title 49, U.S.C., states that the provisions of Chapter 20 (Title 49, "Federal Aviation Program") are in addition to the remedies then existing " * * * at common law or by statute." Defendants also point to Senate Report 1353, July 1, 1968, *supra*, wherein it is stated: "It is not the intent

of the committee in recommending this legislation to effect any change in the existing apportionment of power between the Federal and State local governments." Page 2693. It is to be noted that the Senate Report, at pages 2693 and 2694, also states: "The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. Local noise control legislation limiting the permissible noise level of all overflying aircraft has recently been struck down because it conflicted with Federal regulation of air traffic. *American Airlines v. Town of Hempstead*, 272 F. Supp. 226 (U.S.D.C., E.D., N.Y., 1966). The court said, at 231, 'The legislation operates in an area committed to Federal care, and noise limiting rules operating as do those of the ordinance must come from a Federal source's H.R. 3400 would merely expand the Federal Government's role in a field already preempted. It would not change this preemption. State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft.'"

In evaluating Section 1506, *supra*, and the statements of the Senate Committee, we must have in mind the rules governing preemption as announced by the Supreme Court and the provisions of the Commerce Clause of the United States Constitution.

In *Chicago & Southern Air Lines vs. Waterman Steamship Corp.*, 333 U.S. 103 (1948), the Supreme Court states at page 107:

"Of course, air transportation, water transportation, rail transportation, and motor transportation all have a kinship in that all are forms of transportation and their common features of public

carriage for hire may be amenable to kindred regulations. But these resemblances must not blind us to the fact that legally, as well as literally, air commerce, whether at home or abroad, soared into a different realm than any that had gone before. Ancient doctrines of private ownership of the air as appurtenant to land titles had to be revised to make aviation practically serviceable to our society. *A way of travel which quickly escapes the bounds of local regulative competence called for a more penetrating, uniform and exclusive regulation by the nation than had been thought appropriate for the more easily controlled commerce of the past.* [Emphasis added.]

Mr. Pyle, Director of Aviation Development Council at La Guardia airport, New York City, testified: "The approach to the solution of problems in air transportation at the local level just does not work. It has to be done on a national basis because it is a national operation." [R. Tr. 349.] He also stated that air transportation was to be differentiated from surface transportation because of the variance in the degree of flexibility between the two.

In viewing the effect of the BuOr with respect to preemption and the Commerce Clause issues, it appears that the Ordinance should be considered from the national level. The Supreme Court so held as to the railroad in *Chicago vs. Santa Fe*, 357 U.S. 77, 86-87 (1957).

The case of *American Airlines vs. Town of Hempstead*, 272 F. Supp. 226 (D.C., E.D., N.Y., 1966), involved an Ordinance regulating noise levels which devoted the lower air space to aircraft and closed the land-

ing approaches and take-off paths of the Hempstead airport. The court said that the decisive question was whether the Ordinance " * * * conflicted with Federal law, or invades a field of legislation reserved to the National government."

In discussing the test of power to enact the Ordinance, the court states:

"Such an ordinance as Hempstead's cannot be considered in the accident of its particular circumstances. * * * In the perspective of power, the ordinance must be tested as if it were one of a set of ordinances each enacted by a bordering town, and all, taken together, enveloping the airport. Diversion of the airport traffic over another Town would then be impossible and each ordinance would be revealed in its inner nature as a direct regulation of aircraft flight. * * * The question remains, may the municipalities that surround an airport adopt such ordinances as Hempstead's which deny to aircraft those parts of the navigable air space that cannot be used without causing noise on the ground in excess of specified limiting noise spectra.

"* * * legislation, whatever its purpose, that denies access to navigable air space by local rule cannot but be regarded as a plain and forbidden exertion of the power to regulate commerce as such. * * *

"But even if the commerce clause were not thought without more to preclude local action of the kind here involved, the actual exercise by the Congress of the power to regulate in this field is so pervasive as to preclude valid enactment of the Hempstead Ordinance. It would be difficult to vis-

realize a more comprehensive scheme of combined regulation, subsidization and operational participation than that which the Congress has provided in the field of aviation." [Pages 231-32.]

After enumerating the Federal statutes, regulations and activities of Federal agencies in the field of air navigation and traffic, the Court observes:

"The federal regulation of air navigation and air traffic is so complete that it leaves no room for such local legislation as the Hempstead Ordinance." [Citing numerous cases.] Page 233.

At page 235 the Court says:

"Local initiative in noise control of aviation is inherently an effort to regulate a consequence while disclaiming regulation of the cause. It cannot coexist with a comprehensive system of federal regulation of aircraft manufacture (through certificates of airworthiness) and federal regulation of air navigation and air traffic."

VIOLATION OF COMMERCE CLAUSE

Congress is vested with the authority to regulate commerce among the States by Article I, Section 8, Clause 3, of the Constitution. The rule is well established that state and local governments may not unreasonably burden commerce by their acts. The BuOr, while it does not seek to completely deny the use of navigable air space, does seek to eliminate its use by jet aircraft for eight hours of the day.

Continental Airlines, an interstate carrier by virtue of Certificate of Public Convenience and Necessity issued by the CAB on May 12, 1970, Exhibit 9, now serves the Hollywood-Burbank area from the HBA. One of its scheduled routes is from Burbank to Seattle and

return. The evidence shows that if Seattle imposed an ordinance similar to the BuOr no jet aircraft could leave Seattle, or any city in the Northwest, from HBA after 7:00 P.M., nor could a plane depart HBA for Seattle after 7:00 P.M. in order to arrive at the respective destinations before the nocturnal curfew hour of 11:00 P.M. Thus, with such an Ordinance in effect in only two airports the hours of take-off from both airports for flights to and from Seattle would be curtailed to only twelve hours of the day, not eight hours as in this case of the curfew in force at only one of the airports.

The Certificate of Public Convenience and Necessity now issued to scheduled airlines by the CAB authorizes them to fly a specific route or routes and also obligates the line to give *adequate service* to the cities on their routes. [R. Tr. 232.]

General Von Kann, Vice-President, Operations and Engineering, of Air Transport Association of America, testified that a curfew Ordinance, if valid, would be adopted by virtually all types of local airport authorities. [R. Tr. 322.] Mr. Pyle testified in similar vein. [R. Tr. 334.]

The noise problem created by jet aircraft is well known and it appears to the Court that a curfew Ordinance, if valid, would promptly be adopted by virtually all cities surrounding airports. Considered singly, such an Ordinance might not impose an unlawful interference with interstate commerce in all cases. However, considered on a national level, the Ordinance could not stand. Based on authorities discussed hereinabove, the Court concludes, as noted above, that in determining the effect on commerce the Ordinance is to be considered on a national basis. Mr. Mitchell, Vice-Presi-

out of Continental Airlines in charge of corporate planning, Mr. Pyle, and General Von Kann, testified in depth on the effect of such an Ordinance, on a national basis, on interstate commerce as well as on the efficient use of the air space. Some 1009 flights of scheduled airlines would have to be eliminated or re-scheduled. [Exhibit 52, R. Tr. 103-06.] Position problems as to planes would eliminate 1370-odd additional flight operations. [R. Tr. 336.]

Approximately 48% of air mail and 42% of air freight is moved at night. [Exhibit 55, R.Tr. 337-39.] It should be noted that no air mail is flown out of HBA.

If the experience of Continental is average, the Ordinance on a national basis would increase costs by 25% [R. Tr. 261-63] by reason of the loss in the utilization of aircraft as well as the required purchase of new planes to meet the concentration of flights within the permitted hours of take-off, if, in fact, the re-scheduling of flights so eliminated could be accomplished from a practical standpoint. Additional maintenance shops would also have to be established by all airlines to accomplish the required maintenance at necessary locations for proper and efficient use of their planes. [R. Tr. 302-305.]

It appears from the evidence that there would be a very serious loss of efficiency as to the use of air space if a national curfew were imposed. Obviously, if the use of the air space at HBA were curtailed by eight hours per day and this limitation of use time compounded by the adopting of such Ordinance effective as to other airports used by interstate and intrastate airlines, the carriage of interstate passengers and goods would be seriously interrupted and would conflict with

the certificated rights and obligations of such airlines. See *Castle vs. Hayes Freight Lines*, 348 U.S. 61, 63-64 (1954), where the Court held the State of Illinois was without authority to revoke or suspend operations in that state of an interstate motor carrier for violation of a law regulating the weight of loads to be carried on the state's highways. *Southern Pacific vs. Arizona*, 325 U.S. 761, 767 and 775 (1945), where the Supreme Court held invalid an Arizona Ordinance regulating the length of trains, the Court observing that if one state may regulate train lengths so may all others, resulting in a serious impediment to the free flow of commerce.

There is no conflict in the evidence adduced in this case and it should be concluded that air commerce, by reason of its speed and volume, requires a single authority in control if it is to be conducted at maximum safety and efficient use of the navigable air space.

The evidence discloses that air traffic is unique and should be controlled on the national level.

The case of *Stagg vs. Municipal Court of Santa Monica*, 82 Cal. Rptr. 578 (Dec., 1969), is relied on by the defendants in support of their contention that there is no preemption by the Federal Government of the field covered by the BuOr so as to make the Ordinance invalid and unenforceable.

The Santa Monica Airport (SMA), which was involved, was city owned and the California District

Court of Appeals (DCA) held a curfew Ordinance adopted by the City of Santa Monica, which precluded aircraft from taking off from the SMA between the hours of 11:00 P.M. and 7:00 A.M. the next day, to be valid. The SMA is not used by scheduled or intrastate airlines. The Appellate Court reversed the Superior Court's ruling that " * * * the Ordinance was invalid because its subject matter was preempted by State law." The DCA held that the field was not so preempted and in the instant case the Attorney General also asserts non-preemption of the field by the State. At page 579 of its opinion, the DCA, in referring to the Superior Court, says:

"The court found it unnecessary to decide whether there was any federal preemption."

It observes two paragraphs later:

"Preliminarily, it must be recognized that the doctrine of federal preemption has no application here."

The opinion of the DCA, as to preemption, appears to turn on its conclusion that the curfew Ordinance was an unreasonable regulation which only incidentally affected the right of flight but did not impair that right. The Court, after stating its research disclosed no Federal or California enactment which directly conflicts with the Ordinance in question, states:

"The United States by virtue of its sovereignty over navigable airspace has the paramount power to regulate air traffic. Federal statutes, after de-

fining navigable airspace * * *, authorize the administrator to regulate the use of navigable airspace and to establish rules governing the flight, navigation, protection and identification of aircraft." [Page 580.]

The Court did not ground its decision on the proprietary capacity of the city but did discuss the city's rights to regulate its municipally owned airport as a public utility and the authority of the city to regulate the use of the airport under Section 50470-74, California Government Code. [Pages 580-81.]

Loma Portal Civic Club vs. American Airlines, Inc., 39 Cal. Rptr. 708 (1964), a decision of the California Supreme Court in bank, is cited and discussed by the DCA in the Stagg case, *supra*. The members of the Loma Portal Civic Club resided in the flight path of jet aircraft using adjacent Lindbergh Field in San Diego. They sought to prohibit such flights at low altitudes and at such times as to interfere unreasonably with the use and enjoyment by plaintiffs of their homes.

The Court denied injunctive relief but did not find preemption on the part of the Federal Government as a grounds for precluding the relief sought. In denying relief, the Court said:

"It is clear, therefore, that it would be contrary to the policy of this state to grant an injunction against flight operations in the vicinity of a public airport, conducted by regularly scheduled, certificated airlines, not alleged to be conducted in viola-

tion of federal orders and regulations or in an imminently dangerous manner, and not alleged to be carried on in a manner inconsistent with the public interest inhering in the continuation of such service.

* * *

"We hold here that, under the facts of this case, i.e., the operation of aircraft with federal airworthiness certificates in federally-certificated, scheduled passenger service, in conformity with federal safety regulations, in a manner not creating imminent danger, and in furtherance of the public interest in safe, regular air transportation of goods and passengers, an injunction is not available." [Pages 713-14.]

Reference is also made by the Court to the right of landowners who suffer from aircraft annoyances to seek damages from the owner or operator of the aircraft or the owner or operator of the airport involved. It also points out that it is not making a determination with respect to the rights of the parties where private airplanes and airports are concerned. [Pages 714, 715-16.]

The Court, in *American Airlines vs. Town of Hempstead*, 272 F. Supp. 226, *supra*, also discussed the right of landlords to just compensation if overflights are of such a nature as to amount to a taking of property for public purposes. [Page 231.]

Prior to the decision in the Stagg case, *supra*, the City Attorney of Burbank rendered an exhaustive opinion to the Burbank City Manager, dated September 22, 1969, wherein he concluded that the City of Burbank had no power to limit or restrict flights of aircraft utilizing HBA. Copy of the opinion appears as Exhibit A to the supplemental memorandum of points and authorities filed by plaintiffs Lockheed and PSA on May 22, 1970.

The City Attorney now explains that his conclusion was based on the theory that the State of California had preempted the area of restriction of flights and amount of noise emitted by jet aircraft. However, on page two of the opinion, the City Attorney says: "The City of Burbank has no power to establish restrictions on flights or the amount of noise which may be emitted by aircraft using the Hollywood-Burbank airport for the reason that this area of control has been preempted by the State and Federal governments."

The opinion discusses several of the cases cited by counsel on both sides in the case at bar as well as the activities of the Federal Government in the field involved.

In summarizing the opinion it is said, the residents in the vicinity of the HBA should limit their complaints to Lockheed Air Terminal and present their views as to noise to the FAA and the Department of Aeronautics of the State of California and that legislative action can only be accomplished by the Congress of the United States or the State Legislature.

The problems created by noise from jet aircraft are serious and disturbing, to say the least. Effective means has not as yet been found to reduce the noise to desired sound levels. In some airports the required use of certain runways in take-off will send the aircraft out over the ocean or other non-populated areas. However, in the landlocked, thickly populated area in which HBA is located, the use of preferential noise abatement runways is helpful to reduce the noise over Burbank but it merely diverts it to other populated areas. It will be noted from Exhibit A hereto that planes taking off on runway 25 are not over Burbank at any time, and the evidence shows that those taking off on runway 15, with destination to the North, turn West after take-off and are in the Burbank air space but for a very short time.

Our scientific and mechanical expertise has not yet solved the problem of noise resulting from the generation of power by jet engines. However, if the time during which the navigable air space may be used is to be curtailed, the Court concludes that the action must come from Congress, or its authorized agency, if the safe and efficient use of the air space is to be maintained and interstate commerce protected from unreasonable burden and interference.

The plaintiffs are entitled to injunctive relief, as prayed, and for their costs of suit herein.

Plaintiffs' counsel are requested to prepare, serve and lodge proposed Findings of Fact, Conclusions of

Law and Judgment in accordance with the provisions of
Local Rule 7.

This Memorandum is not to be deemed a final judgment. DATED: September 24, 1970.

/s/ E. Avery Crary

E. Avery Crary

United States District Judge

Findings of Fact and Conclusions of Law.

Judgment.

Lodged, 5 p.m., Nov. 25, 1970, Clerk U.S. District Court, Central District of California.

Filed Nov. 30, 1970, Clerk U.S. District Court, Central District of California.

(Title omitted in printing).

The within action having come on regularly for trial on September 15, 1970, before the Honorable E. Avery Crary, Judge presiding, plaintiffs Lockheed Air Terminal, Inc. and Pacific Southwest Airlines being represented by Kirtland & Packard, Robert C. Packard and Winston F. Tyler, intervening plaintiff Air Transport Association of America being represented by O'Melveny & Myers, Warren Christopher, Ralph W. Dau and Bertrand M. Cooper, and defendants all being represented by Samuel Gorlick, City Attorney, Richard L. Sieg, Jr., and Michael R. Murname, except that defendant Samuel Gorlick is represented by Assistant City Attorney Richard L. Sieg, Jr., whereupon evidence both oral and documentary having been introduced by all parties, the cause having been argued and submitted for decision, and the Court on September 24, 1970 having filed its Memorandum for Use in Preparation of Proposed Findings of Fact, Conclusions of Law, and Judgment, whereupon plaintiffs and intervening plaintiff having submitted Proposed Findings of Fact and Conclusions of Law and Judgment, defendants having filed their objections thereto and having requested additional findings, and the Court having heard the argument of counsel thereon;

WHEREFORE, the Court being fully advised in the premises now renders its decision as follows:

FINDINGS OF FACT

1. Plaintiff Lockheed Air Terminal, Inc. (hereinafter "Lockheed"), is a corporation organized and existing under and pursuant to the laws of the State of Delaware and is doing business in the County of Los Angeles, State of California. Lockheed, at all times material herein, was and is the operator of the Hollywood-Burbank Airport and the owner of all but those portions of the Airport described in Findings Nos. 6 and 18 which are held under lease from the federal government.

2. Plaintiff Pacific Southwest Airlines (hereinafter "PSA") is a corporation organized and existing under and pursuant to the laws of the State of California and is doing business in the County of Los Angeles, State of California.

Intervening plaintiff Air Transport Association of America (hereinafter "ATA") is an unincorporated trade association, the members of which include virtually all United States scheduled interstate air carriers. Among its 32 members are the following scheduled air carriers which use Hollywood-Burbank Airport: Air West, Inc.; Continental Air Lines, Inc.; United AIR Lines, Inc.; and Western AIR Lines, Inc.

4. The City of Burbank is a municipal corporation in the County of Los Angeles, State of California, having power to sue and be sued in its own name;

Dr. Jarvey Gilbert is the duly elected Mayor of the City of Burbank;

Robert R. McKenzie is the duly elected Vice Mayor of the City of Burbank;

George W. Haven, Robert A. Swanson and D. Verner Gibson are duly elected Councilmen for the City of Burbank;

Joseph N. Baker is the City Manager of the City of Burbank;

Samuel Gorlick is the City Attorney for the City of Burbank;

Rex R. Andrews is the Chief of Police of the City of Burbank.

5. The defendants Gilbert, McKenzie, Haven, Swanson and Gibson constitute the City Council for the City of Burbank and have the authority to enact and enforce ordinances for the regulation of specified matters within the City of Burbank. Defendant Gorlick and the attorneys within his office have the responsibility of prosecuting violations of ordinances and other misdemeanors within the City of Burbank. The defendant Rex R. Andrews, as Chief of Police, is responsible for and oversees the enforcement of municipal ordinances including the ordinance here in question.

6. Hollywood-Burbank Airport was dedicated May 30, 1930, and has been in continuous use since that time by both private and commercial aircraft. The Airport provides services to regularly scheduled commercial aircraft as well as to privately owned corporate and general aviation aircraft. Hollywood-Burbank Airport occupies approximately 535 acres, approximately 128 of which are owned by the United States Government. The Airport lies mainly in the City of Burbank and partially in the City of Los Angeles.

7. The City of Burbank has a population of approximately 95,000.

8. On March 31, 1970, the City Council of the City of Burbank duly and regularly adopted Ordinance No. 2216, which added Section 20-32.1 to the Burbank Municipal Code providing as follows:

"Sec. 20-32.1. Aircraft Take-Offs.

"(a) Pure Jets Prohibited from Taking Off Between 11:00 P.M. and 7:00 A.M.

"It shall be unlawful for any person at the controls of a pure jet aircraft to take off from the Hollywood-Burbank Airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

"(b) Airport Operator Prohibited from Allowing Take-Offs.

"It shall be unlawful for the operator of the Hollywood-Burbank Airport to allow a pure jet aircraft to take off from said airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

"(c) Exception: Emergencies.

"This section shall not apply to flights of an emergency nature if the City's Police Department is contacted and the approval of the Watch Commander on duty is obtained before take-off."

and said ordinance became effective on May 4, 1970. The stated purpose of the ordinance is "to prohibit pure jet take-offs at the Hollywood-Burbank Airport between 11:00 P.M. and 7:00 A.M."

9. The defendant officials of the City of Burbank have publicly announced their intention to enforce the curfew ordinance.

10. Almost one of every twenty people in the United States lives in the Los Angeles five-county area. This area is served by scheduled air carriers con-

feeding operations from the Los Angeles International Airport and from four "satellite" airports: Hollywood-Burbank Airport, Long Beach Metropolitan Airport, Orange County Airport and Ontario International Airport.

11. Satellite airports are airports that serve geographical areas immediately adjacent to major metropolitan areas which also have one or more hub or major airport facilities. Other examples of satellite airports are the Oakland International Airport and San Jose Municipal Airport in the San Francisco area.

12. All of the above named satellite airports are surrounded by reasonably well-defined geographical areas which, by reason of the population they serve and their stage of urban development, warrant additional air services in their own right. Many persons living in these various geographical areas find it more convenient and responsive to their needs to have air service provided through their respective satellite airports than to continue their dependence upon the hubs.

13. Satellite airports play an essential role in the national air transportation system in relieving air and ground congestion, in reducing air traffic delays at primary airport centers, and in providing more convenient service to the surrounding population centers, which are of sufficient size and economic power to justify their own air service. This important role has been and is recognized and implemented by the Civil Aeronautics Board in its route investigations.

14. Hollywood-Burbank Airport is an important satellite airport in the national air transportation system and forms a vital link in interstate and intrastate commerce. It is the most convenient airport in the

greater Los Angeles metropolitan area for the entire San Fernando Valley, Hollywood and the cities of Burbank, Glendale, Pasadena and Alhambra, an area containing a population of over 2.2 million persons.

15. The Burbank City Council has on several occasions, and as recently as May 13, 1969, requested and supported additional air transportation services at the Hollywood-Burbank Airport in various route proceedings before the Civil Aeronautics Board and the California Public Utilities Commission.

16. On May 12, 1970, in its Pacific Northwest-California Investigation, Docket No. 18884, the Civil Aeronautics Board determined that additional air service was required between the Pacific Northwest and the Los Angeles metropolitan area. The Board awarded a new route to Continental Air Lines and provided that this additional service be provided through the satellite airports in the Los Angeles metropolitan area, including Hollywood-Burbank Airport. The Mayor and City Council of Burbank expressly requested and supported this award of additional air service at Hollywood-Burbank Airport.

17. Hollywood-Burbank Airport is included in the National Airport Plan promulgated by the Administrator of the Federal Aviation Administration (hereinafter "FAA") pursuant to the Federal Airport Act of 1946, Ch. 261, 60 Stat. 170.

18. Hollywood-Burbank Airport has two principal runways for the operation of aircraft. These runways are designated by their compass heading in tens of degrees.

(a) The "north-south" runway is situated on an axis of 330°-150°. This runway is designated

Runway 33 when it is used by aircraft taking off to the northwest or landing from the southeast, and, Runway 15 when it is used by aircraft landing from the northwest or taking off to the southeast. Approximately 2,050 feet of the northernmost portion of this runway lie in the City of Los Angeles on land owned by the United States Government.

(b) The "east-west" runway is situated on an axis of 070° - 250° . This runway is designated Runway 7 when it is used by aircraft landing from the west or taking off to the east, and Runway 25 when it is used by aircraft landing from the east or taking off to the west. Approximately 2,250 feet of the westernmost portion of this runway lies on land owned by the United States Government.

(c) Aircraft landing on Runways 7 and 15 and aircraft departing on Runways 25 and 33 do not overfly the City of Burbank.

19. Prior to the commencement of operations involving jet aircraft landings and takeoffs on the two runways at Hollywood-Burbank Airport, a determination was made by the FAA that such use of each runway would not be unsafe either to persons or property on the ground or to persons and property in the air.

20. In 1969 there were approximately 32,000 air carrier movements at Hollywood-Burbank Airport serving 1,178,000 commercial passengers in interstate and intrastate transportation. Approximately 97% of these operations were conducted by pure jet aircraft.

21. No air mail is presently carried to or from the Hollywood-Burbank Airport by any air carrier utilizing the airport's facilities.

22. No all-cargo flights are presently operated from the Hollywood-Burbank Airport, although such flights have been operated from the Airport in the past.

23. The following types of pure jet commercial aircraft operate from the Hollywood-Burbank Airport: Boeing 727, Boeing 737, Douglas DC-9. The Administrator of the FAA has issued a type certificate covering each of these types of aircraft. Said type certificates provide that the type to which issued meets the airworthiness requirements of the Federal Aviation Regulations. The following types of pure jet business aircraft operate from the Airport: Jetstar, Gulfstream II, Sabreliner, Lear Jet, DeHavilland and Falcon. Comparable type certificates and airworthiness certificates are required by law in order to operate these business aircraft in air commerce.

24. Each scheduled interstate carrier that uses Hollywood-Burbank Airport holds a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board (hereinafter "CAB"). The certificates issued to Air West and Continental provide that said carriers are authorized to engage in air transportation with respect to persons, property and mail over specified routes into and out of Hollywood-Burbank Airport.

25. Each scheduled interstate air carrier that uses Hollywood-Burbank Airport holds an Air Carrier Operating Certificate issued by the Administrator of the FAA. Said certificates specify that each of said carriers is properly and adequately equipped and able to conduct a safe operation as an air carrier of persons, property and mail in scheduled air transportation between

points authorized in the air carrier's certificate of public convenience and necessity.

26. PSA holds a Commercial Operating Certificate issued by the Administrator of the FAA, which certificate provides that PSA is authorized to operate as a commercial operator to conduct common carrier operations carrying passengers and cargo intrastate on a scheduled basis. PSA holds a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission.

27. The Administrator of the FAA has issued Operations Specifications to each regularly scheduled air carrier that uses Hollywood-Burbank Airport. Said Operations Specifications provide that each carrier is required to operate turbojet aircraft within the navigable airspace of the United States in accordance with instrument flight rules. The Operations Specifications issued to Air West and Continental provide that said carriers are authorized to use Hollywood-Burbank Airport as a regular airport; the Operations Specifications issued to United and Western provide that said carriers are authorized to use Hollywood-Burbank Airport as an alternate airport. The operations conducted by each scheduled carrier at Hollywood-Burbank Airport are specifically authorized by each carrier's Operations Specifications.

28. Air West operates Douglas DC-9 aircraft at Hollywood-Burbank Airport. United has operated and operates the following types of aircraft at Hollywood-Burbank Airport: Boeing 727 and Boeing 737. Western operates and has operated Boeing 737 aircraft at Hollywood-Burbank Airport. PSA operates the following types of aircraft at Hollywood-Burbank Airport: Boeing 727, Boeing 737 and Douglas DC-9.

29. Each aircraft operated by the regularly scheduled carriers that use Hollywood-Burbank Airport has been issued an Airworthiness Certificate by the Administrator of the FAA which certifies that, as of the date of issuance, the aircraft to which issued has been inspected and found to conform to the Type Certificate therefor and to be in condition for safe operation.

30. Each pilot of a civil aircraft of United States registry operated in the navigable airspace of the United States is required to have in his personal possession a current pilot certificate issued by the Administrator of the FAA.

31. Each pilot of an aircraft operated by a scheduled air carrier at Hollywood-Burbank Airport is required to hold a current air transport pilot certificate issued by the Administrator.

32. Each flight engineer of a civil aircraft of United States registry is required to have in his personal possession a current flight engineer's certificate issued by the Administrator.

33. Pursuant to newly enacted federal legislation, Hollywood-Burbank Airport is required to apply for and obtain an Airport Operating Certificate issued by the Administrator of the FAA pursuant to Section 51 (b) of the Airport and Airway Development Act of 1970, Public Law 91-258, 84 Stat. 219 (May 21, 1970), within two years from the date of enactment in order to continue to serve air carriers certificated by the CAB. Management of Lockheed intends to apply for such a certificate under the regulations to be issued by the Administrator governing application.

34. The FAA exercises centralized management and control over the navigable airspace of the United States. The various Air Route Traffic Control Centers operated by the FAA throughout the United States are assigned responsibility for the management and control of the entirety of this navigable airspace.

35. The Los Angeles Center, located at Palmdale, California, exercises management and control of the airspace in a geographical area of approximately 184,000 square miles which is bounded on the south by the border between the United States and Mexico, on the east by the Colorado River, and which extends from mid-California to the north and 150 miles to sea to the west.

36. Pursuant to a license agreement with Lockheed, the FAA operates the Airport Traffic Control Tower and Radar Approach and Departure Control at Hollywood-Burbank Airport.

37. In connection with such operation, the FAA has expended approximately \$2 million on the installation of navigational aids at Hollywood-Burbank Airport, including the Instrument Landing System ("ILS"), runway approach and identification lights, and radar and radio equipment.

38. The Los Angeles Center has subdelegated control over a portion of its navigable airspace, which portion is for this purpose defined geographically and vertically, to the FAA terminal facility located at Hollywood-Burbank Airport.

39. Pursuant to the Federal Aviation Act of 1958, U.S.C. §1301, *et seq.*, the Administrator of the FAA has determined that there exists a need for a system that will provide adequate separation between and or-

derly control of the air traffic emanating from points within and without the United States and converging on large metropolitan areas and airports, such as Hollywood-Burbank Airport. Accordingly, the Administrator has established a system for the control of air traffic which provides for such orderly control and separation, and which operates within controlled airspace identified as "control zones" and "control areas". Control zones encompass all the airspace from the surface to infinity within five miles of the geographical center of an airport. Control areas are of varying elevations and dimensions, and include the area surrounding Hollywood-Burbank Airport. The airspace within a control zone below an altitude within 2,000 feet above the surface is defined as the airport traffic area.

40. Hollywood-Burbank Airport is located under a control area, within an airport traffic area, within a control zone and under many converging Federal airways, all of which have been established by the Administrator of the FAA pursuant to statutory authority.

41. Unless otherwise authorized by FAA Air Traffic Control, a pilot operating within an airport traffic area must maintain two-way radio communication with the control tower. He is further required to comply with all clearances and instructions that may be issued by Air Traffic Control. Air traffic control over the aircraft within the Hollywood-Burbank Airport Control Zone, including approach control and departure control, is exercised by FAA personnel located in the control tower situated at the airport. Except when in direct communication with the control tower, each regularly scheduled air carrier is required by its Operations Specifications to operate its jet aircraft in accordance with FAA Instrument Flight Rules ("IFR"). When not

under the control of an FAA airport control tower, aircraft operating under IFR are under the direct control of an FAA Air Route Traffic Control Center and are required to comply with the clearances received from that facility.

42. No aircraft may taxi at or take off from Hollywood-Burbank Airport without first receiving an appropriate clearance from Hollywood-Burbank Air Traffic Control. Prior to takeoff, pilots of aircraft that are required to operate under IFR must file their flight plans with the Los Angeles Air Route Traffic Control Center. Every fifteen minutes the FAA computer located at the Los Angeles Center provides updated flight departure information to the appropriate tower facilities and to sectors within the Center. When a commercial jet aircraft is ready for departure from its terminal gate, it makes radio contact with FAA Air Traffic Control. It is at that time assigned a runway for takeoff and is ultimately given clearance to taxi. Prior to taking its position on the runway, the aircraft is given a departure clearance, which includes the assignment of departure procedures and assignment of a radio beam intersection to which the aircraft is directed to fly.

43. On receiving its clearance to take off, each jet or other large aircraft is required to conform with all FAA takeoff procedures and to climb to an altitude of 1,500 feet above the airport surface as rapidly as practicable. Departure clearances for IFR aircraft incorporate standard instrument departure procedures established for Hollywood-Burbank Airport by the FAA. Aerial charts showing these standard instrument departure procedures in effect at Hollywood-Burbank Air-

port are published by the Department of Commerce, United States Coast and Geodetic Survey. Aircraft taking off from Hollywood-Burbank Airport must conform with the assigned FAA departure clearance including all standard IFR departure procedures incorporated therein. Control of aircraft crossing the boundary of the airport on takeoff is passed to Hollywood-Burbank Departure Control, which controls the aircraft and provides separation from other aircraft until the departing aircraft is ready to leave the air space subdelegated to the Hollywood-Burbank terminal facility.

44. As an aircraft departs the airspace subdelegated to the Hollywood-Burbank terminal facility destined, for example, for San Francisco International Airport, control of the aircraft is passed from Hollywood-Burbank Departure Control to the Los Angeles Air Route Traffic Control Center located at Palmdale, California. At about Paso Robles, California, control of the aircraft is passed on to the Oakland Air Route Traffic Control Center, which in turn passes control to the FAA terminal facility at San Francisco International Airport as the aircraft enters the navigable airspace subdelegated to that facility. The aircraft then remains under the control of the San Francisco facility until the aircraft has landed.

45. On entering and operating within the Hollywood-Burbank Airport Traffic Area, jets and other large aircraft must be operated at an altitude of at least 1,500 feet except when further descent is required for a safe landing. No aircraft may be landed at Hollywood-Burbank Airport without first receiving an Air Traffic Control clearance, which includes assignment by the FAA of a runway for landing. In addition to exercising approach control, the FAA maintains and

operates an Instrument Landing System ("ILS") which electronically establishes a three-degree glide slope to Runway 7 at Hollywood-Burbank Airport. Each of the aircraft operated by the regularly scheduled air carriers is equipped with electronic devices that monitor the ILS glide slope and depict the glide slope position in relation to that of the aircraft on the cockpit instrument.

46. On receiving FAA clearance to approach for landing, the aircraft is required to be at or above the glide slope at the outer ILS marker and to remain at or above the glide slope until reaching the middle ILS marker. The outer marker is located approximately 6.1 nautical miles from the approach end of Runway 7, while the middle marker is located approximately 1.8 nautical miles from the approach end of the runway. The glide slope altitude at the outer ILS marker is approximately 2,000 feet above the surface and at the middle marker is approximately 575 feet above the surface. As an additional means of approach control, the FAA prescribes standard instrument approach procedures which are published in Part 97 of the Federal Aviation Regulations. Pictorial approach and landing charts showing these standard instrument approach procedures in effect at Hollywood-Burbank Airport are published by the Department of Commerce, United States Coast and Geodetic Survey. Approaches to Hollywood-Burbank Airport conducted under instrument flight rules are required to be in accordance with the standard instrument approach procedures set forth in Part 97 of the Federal Aviation Regulations.

47. During every portion of an IFR flight, the aircraft and pilot are operating under explicit instructions and control of an FAA facility.

48. The navigable airspace in the vicinity of major air terminals across the United States, including Los Angeles, is presently congested. This congestion has resulted in extensive delays at a number of the major airports. This condition exists because the services required by the American traveling public frequently exceed the capacity of the nation's airport system.

49. In exercising centralized management and control over the navigable airspace of the United States, the FAA has as one of its goals the efficient use of such airspace, which includes the expeditious movement of aircraft. The goal of efficient use of airspace, although related, is separate and distinct from the goal of insuring the safety of aircraft.

50. The FAA exerts its power to achieve efficient use of navigable airspace in a variety of ways, including the utilization of flow control procedures and high density airport rules.

51. Flow control is a means of metering aircraft in order to meet any given traffic condition. Flow control restrictions are imposed by FAA facilities from time to time on commercial, business and other aircraft in order to minimize delays resulting from congestion or weather or equipment problems and to accommodate safely the maximum number of aircraft within the Air Traffic Control System. A flow control restriction regulates the number of aircraft that can be accepted within an area and may restrict altitudes and/or routes to be flown during a specified period of time. When an FAA terminal facility or tower encounters a condition which will result in airborne delays of 30 minutes or more, the facility notifies its Air Route Traffic Control Center of this fact. The Center, in turn, will impose a

flow control restriction on adjacent Centers. A flow control restriction obligates the receiving center to (a) clear aircraft on specified routes; (b) establish a separation in time, altitude or distance; or (c) limit the number of departures in a given period by holding aircraft on the ground. Thus the imposition of a flow control restriction by San Francisco can and does result in the Los Angeles Center's holding aircraft on the ground at Hollywood-Burbank Airport.

52. In 1970 the FAA instituted a system of centralized flow control. This system is managed by the FAA Central Flow Control Facility located at Washington, D. C. The Central Flow Control Facility coordinates and supervises the flow of air traffic throughout the Air Traffic Control System to minimize en route delays and achieve the maximum utilization of the air space. Under the new centralized flow control system, prior to imposing a flow control restriction, an Air Route Traffic Control Center must clear the proposed restriction through the Central Flow Control Facility in order to insure that proper coordination may take place within the system.

53. To provide relief from excessive delays caused by congestion at certain of the major airport terminals in the United States, the FAA prescribed High Density Traffic Airport Rules in December 1968, 33 F.R. 17896. These rules, as amended, are presently in effect. These rules designate John F. Kennedy, La Guardia, Newark, O'Hare and Washington National airports as high density traffic airports and restrict the hourly number of IFR operations (takeoffs and landings) at these airports to a specified number. The total number of IFR operations is allocated among various classes of users, namely scheduled air carriers, scheduled air

taxis, and general aviation which includes business aircraft. Although the number of operations allowed varies during different periods of the day, the rules allocate operations for the entire twenty-four hour period. To operate to or from these designated airports, aircraft are required to have an arrival or departure reservation. These rules are intended by the FAA to work in conjunction with flow control procedures described in Paragraph 51.

54. Congress and the Administrator of the FAA are fully cognizant of the problems created by aircraft noise. In allocating the IFR reservations in the High Density Traffic Airport rules, the Administrator specifically had in mind the problem of the noise disturbance that would result from encouraging the scheduling of more flights after the hour of 10:00 P.M.

55. In the interest of alleviating noise disturbances to the residents of communities adjoining airports located in metropolitan areas, the Administrator of the FAA has established regulations that (1) require turbine powered fixed wing aircraft, approaching for landing, to maintain within the airport traffic area an altitude of at least 1,500 feet above the surface of the airport "until further descent is required for a safe landing", and (2) require such aircraft, when taking off, to climb to 1,500 feet as rapidly as practicable.

56. On September 4, 1969, acting pursuant to the authority of FAA Order 7100.13, the FAA Chief of the Airport Traffic Control Tower, Burbank, California issued an order (BUR. 7100.5B) prescribing a noise abatement runway use program at the Hollywood-Burbank Airport. This order makes Runway 25 the preferential runway for departures of turbine powered

craft between the hours of 11:00 P.M. and 7:00 A.M. The preferential runway is assigned by the FAA control tower during these hours by incorporation into an aircraft's departure clearance as an instruction to the pilot. This order designating a preferential runway was a noise abatement measure for the benefit of the City of Burbank. In issuing this order, said FAA Chief was in hand the subject matter of nighttime takeoffs, and, based upon his authority and expertise, acted to minimize the noise consequences of such operations. However, in the landlocked, thickly populated area in which the Hollywood-Burbank Airport is located, the use of a preferential noise abatement runway is helpful in reducing noise over the City of Burbank, but such use merely diverts the noise to other populated areas.

57. Where possible, the FAA has developed standard instrument departures which are assigned between the hours of 11:00 P.M. and 7:00 A.M. in order to reduce noise over residential areas during those hours. Such standard departures are presently in effect at Los Angeles International Airport. In the event that one of these standard departures is not designated in the flight plan filed for a departing aircraft, such departure will be assigned during the indicated hours by incorporation into the aircraft's departure clearance as an instruction to the pilot.

58. The federal statutes and regulations and the orders of the Civil Aeronautics Board and of the Administrator of the Federal Aviation Administration have completely occupied the field of the regulation of the use of the navigable airspace and aircraft operations as to demonstrate that Congress left no room for local regulation such as the Burbank curfew ordinance.

59. Aircraft have such a range and such speed and they involve such technical complexity that they have to be managed on a centralized basis. The transport aviation industry is unique and must be regulated on a national basis, both technically and economically, by the Federal Government. The approach to the solution of air transportation problems at the local level does not work. Regulation on a national basis is required because air transportation is a national operation.

60. The federal statutes and regulations governing and controlling the use of air space and air traffic touch a field in which the federal interest is so dominant as to preclude enforcement of a local ordinance such as the Burbank curfew ordinance.

61. From February 1968 until July 12, 1970, PSA operated a Boeing 727 aircraft which departed the Hollywood-Burbank Airport at 11:30 P.M. each Sunday night destined for San Diego. On the average said flights served about 125 passengers, with an average of 80 being boarded at Hollywood-Burbank. At the time of the imposition of the Burbank curfew ordinance, this was the only regularly scheduled flight taking off from Hollywood-Burbank Airport between the hours of 11:00 P.M. and 7:00 P.M. This was an intrastate flight originating in Oakland, California with its final destination San Diego, California. Both PSA and the traveling public were inconvenienced by the required cancellation of this regularly scheduled commercial flight.

62. Since March 9, 1970 PSA has operated a Boeing 727 or Boeing 737 aircraft on charter to Lockheed California Company which aircraft departs from the Hollywood-Burbank Airport Monday through Fri-

at 6:40 A.M. destined for Palmdale. This flight is being permitted to operate by the City as an emergency flight.

63. Several fleets of corporate jet aircraft use Hollywood-Burbank Airport as their home base. Prior to the enactment of the curfew ordinance, there were at least three flights per week of corporate jet aircraft during the now-proscribed curfew period.

64. Lockheed Aircraft Corporation operates and maintains military defense plant facilities at Hollywood-Burbank Airport.

65. On August 29, 1970, Continental Air Lines commenced regularly scheduled service to Portland and Seattle from the Hollywood-Burbank Airport pursuant to authority granted May 12, 1970, by the Civil Aeronautics Board. These flights are operated utilizing Boeing 727-200 aircraft. In scheduling its flights along this route, Continental did not provide any departures within the Burbank curfew hours.

66. Should sufficient demand develop, Continental anticipates adding another flight from the Pacific Northwest through the Hollywood-Burbank Airport. Such an additional flight would normally be added to depart from Seattle at about 8:00 P.M. in order to provide an even service pattern—morning, noon, dinner-time and after-dinner flights—throughout the day. The Burbank curfew ordinance, however, would restrict Continental from operating a southbound flight departing at that hour. A southbound flight from Seattle through Portland and San Jose, California, to Burbank and on to Ontario can depart Seattle no later than 7:00 P.M. in order not to violate the Burbank curfew.

67. If an 11:00 P.M. to 7:00 A.M. curfew on jet departures were to be enforced at Portland as well as at Burbank, Continental would be restricted from originating flights northbound and southbound along this Ontario-Burbank-San Jose-Portland-Seattle route between the hours of 7:00 P.M. and 7:00 A.M. Only 12 hours of the day would be available for originating such flights.

68. In the event of nationwide imposition of curfew ordinances, Continental would be able to originate departures eastbound on its route from Seattle through Denver, Wichita, Tulsa and Houston to New Orleans only between the hours of 7:00 A.M. and 2:00 P.M. On its Los Angeles through Denver to Chicago route, Continental would be able to originate departures eastbound only between the hours of 7:00 A.M. and 4:15 P.M. The available hours indicated do not take into account any allowance that would have to be made for the delayed arrival problem that would inevitably arise.

69. The problem of noise created by jet aircraft is well known, and it appears that if a curfew ordinance such as that before this Court were held valid, similar ordinances would be adopted by virtually all cities surrounding airports. A curfew ordinance cannot be considered solely in the accident of its particular circumstances because past experience indicates that such local legislation is highly contagious and that its spread to other localities is virtually inevitable if the curfew ordinance at Hollywood-Burbank is upheld.

70. The imposition of curfew ordinances on a national basis would have a near catastrophic effect on the national air transportation system, adversely affect-

the aviation industry, members of the traveling public and the national economy.

71. Continental Air Lines has 48 departures per day on its September 1970 schedule that fall within the curfew hours. If curfew ordinances were instituted on a nationwide basis, Continental would have to cancel all of these flights and would have to cancel flights during non-curfew hours as well because of the problem of positioning aircraft for return flights. These required cancellations would involve approximately 15% of Continental's domestic aircraft miles flown per day.

72. The required cancellation of Continental's night services would greatly inconvenience the traveling public as well as business and industry. Reduced fares on night flights enable many members of the public to travel by air at that time, and the largest proportion of Continental's air mail and air freight is carried at night. To replace the cancelled night service, Continental would have to purchase approximately six new Boeing aircraft at a cost of between \$5,000,000 and \$7,000,000 each. Continental's operating costs would be increased approximately 25% by reason of the reduced utilization of aircraft and the required purchase of additional equipment. These costs would be passed on to the traveling public.

73. There is reason to believe that the imposition of a nationwide curfew would affect the other certificated air carriers in a manner and to an extent comparable to the effects upon Continental described in Findings 71 and 72.

74. The Burbank curfew ordinance became effective on May 4, 1970. Between the hours of 11:00 P.M. (local time) on May 4, 1970, and 6:50 A.M. on

May 5, there were 1,000 scheduled departures of pure jet aircraft operated by federally certificated air carriers from all airports in the United States. (International departures and departures by scheduled intrastate carriers and commuter air carriers are not included in this total and would increase the indicated number.) If curfew ordinances such as that before this Court were instituted on a nationwide basis, all of these flights would have to be cancelled. These cancellations would create positioning problems for the airlines, which would result in additional cancellations of flights during non-curfew hours.

75. The scheduling of aircraft is an extremely complex operation. Public convenience must be balanced with equipment and crew availability. In addition, schedules of the various airlines are interrelated due to the need to provide connecting flights. For example, approximately 30% of Continental's domestic business comes from providing connections with other airlines.

76. The scheduling operation is made more complex by the maintenance requirements of the air fleet. Hundreds of component parts must be maintained on a timed basis. The aviation industry performs the required maintenance on its aircraft at night at a limited number of maintenance bases. Continental, for example, has its major maintenance facility at Los Angeles International Airport. Continental's schedules are worked out so that an aircraft can return to this facility every day or two for maintenance. United Air Lines has six maintenance bases, and 12% of its fleet receives required maintenance every night. The imposition of curfew ordinances on a nationwide basis would severely impair the efficiency of the maintenance

system within the aviation industry by requiring the carriers to establish additional maintenance bases, which would involve more equipment and personnel at considerable increases in operating costs.

77. If curfew ordinances were imposed on a nationwide basis, the federally certificated carriers would be required to engage in extensive rescheduling of existing flights. This rescheduling would cause enormous inconvenience and expense to the air carriers and would result in a deterioration in air transportation services to the public.

78. The imposition of curfew ordinances on a nationwide basis would result in a bunching of flights in those hours immediately preceding the curfew. This bunching of flights during these hours would have the twofold effect of increasing an already serious congestion problem and actually increasing, rather than relieving, the noise problem by increasing flights in the period of greatest annoyance to surrounding communities. Such a result is totally inconsistent with the objectives of the federal statutory and regulatory scheme.

79. Based upon a study made at four major airports, it appears that over 48% of the nation's air mail is presently carried by flights departing between the hours of 11:00 P.M. and 7:00 A.M. The imposition of a departure curfew on a nationwide basis would thus cause at least a one-day delay in the delivery of billions of pieces of mail transported annually.

80. The air cargo industry virtually depends for its existence on its ability to operate at off-peak hours. In large measure, the freight is assembled and loaded between the hours of midnight and 2:00 A.M. and then

transported in flights departing in the early morning for distribution at the start of the business day. A study made in 1966 for the Aviation Development Council in New York showed that approximately 42% of the all-cargo services operated by certificated carriers would have to be cancelled if curfew ordinances were instituted on a nationwide basis.

81. Such cancellation would have drastic effects on the business community. For example, most of the cancelled checks that move throughout the country go through the New York Clearing House in one way or another. These checks are brought in by air freight. Because of air freight and because of its ability to move at night, these checks go through the clearing house the following morning. In 1965, according to the study made for the Aviation Development Council, this meant a saving in bank interest of \$34,000,000 per year. Today such saving would be close to \$100,000,000 per year. In addition, the ability to ship parts by air freight has allowed many businesses to effect significant savings by the elimination of large parts inventories formerly maintained at warehouses located throughout the country. This advantage would be lost to companies and their customers if air freight could not move at night.

82. The imposition of curfew ordinances on a nationwide basis would cause a serious loss of efficiency in the use of the navigable airspace. The limitation on the time available for use of the airspace resulting from such imposition would seriously interrupt and impede the carriage of interstate passengers and goods and would conflict with the federally certificated rights and obligations of the air carriers.

13. The evidence is uncontradicted that air commerce, by reason of its speed and volume, requires a single authority if it is to be conducted with maximum safety and so as to achieve efficient use of the navigable airspace.

14. If the use of the navigable airspace were curtailed through the enactment of curfew ordinances on a nationwide basis, interstate commerce would be subjected to an unreasonable burden and interference.

15. Any conclusion of law hereinafter recited which should be deemed a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of the action by virtue of 28 U.S.C. §1331(a) and 28 U.S.C. §1337; and jurisdiction over the parties.

2. This action arises under the Federal Aviation Act of 1958, 72 Stat. 737 (1958), as amended, 49 U.S.C. §§1301-1542; the Department of Transportation Act, 80 Stat. 931 (1966), 49 U.S.C. §§1651-1659 (Supp. IV 1969); the Airport and Airway Development Act of 1970, Public Law No. 91-258, 84 Stat. 219 (May 21, 1970); the Constitution of the United States, Article I, Section 8, Clause 3 (the Commerce Clause), and Article VI, paragraph 2 (the Supremacy Clause). The matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs. The allegations of the complaint raise issues constituting an actual controversy concerning which the Court pursuant to 28 U.S.C. §2201, et seq., will make a declaration of rights.

3. All defendants reside in, and the claim arose in, the Judicial District.

4. The Federal Aviation Act of 1958, 72 Stat. 737 (1958), as amended, 49 U.S.C.A. §§1301-1342 (hereinafter the "Act"), established the Federal Aviation Agency, now the Federal Aviation Administration ("FAA"), headed by an Administrator who is made responsible under the Act for the exercise of all powers and the discharge of all duties of the FAA.

5. The Act vests in a single Administrator plenary authority for all aspects of airspace management and specifically charges the Administrator with the dual responsibility of insuring the safety of aircraft and the efficient utilization of the navigable airspace.

6. The comprehensive character of the Act demonstrates that Congress intended to provide the Administrator with the tools necessary to exercise his plenary authority. The United States is declared "to possess and exercise complete and exclusive national sovereignty in the airspace of the United States," 49 U.S.C. §1508(a). Having granted to each citizen of the United States "the right of freedom of transit through the navigable airspace of the United States," 49 U.S.C. §1304, Congress further defined "navigable airspace" as all airspace "above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft," 49 U.S.C. §1301(24).

7. The Act conferred upon the FAA and upon its Administrator broad powers to regulate air commerce in the "public interest." 49 U.S.C. §§1303, 1341(a), 1348. The "public interest" is defined to include "the regulation of air commerce . . . to best promote its development and safety and fulfill the requirements of national defense"; "the control of the use of the navigable airspace of the United States . . . in the interest

safety and efficiency"; "the development and operation of a common system of air traffic control and navigation for both military and civil aircraft." 49 U.S.C. §1303.

8. The powers granted by the Congress are not dormant but have been actively exercised. The regulations of the Administrator are of formidable proportions, impressive detail, and manifest sophistication.

9. The high density traffic airport rules, 14 C.F.R. §§121-131, which regulate the number of IFR operations at certain major air terminals over the entire 24-hour period of the day, constitute control of the use and management of the navigable airspace by the Administrator to the end of insuring the efficient utilization of such airspace.

10. The system of flow control instituted by the FAA, under which aircraft can be held on the ground in order to reduce airborne delays and congestion, constitutes control of the use and management of the navigable airspace in accordance with the mandate of the Act, which is to insure the efficient utilization of such airspace.

11. To buttress the authority of the Administrator to deal with the question of noise abatement, in 1968 Congress amended the Act to require the Administrator to prescribe such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise.

12. FAA Order BUR 7100.5B, which establishes Runway 25 as the preferential runway at Hollywood-Burbank Airport for departures of turbine powered aircraft between the hours of 11:00 P.M. and 7:00 A.M., constitutes regulation by the FAA on the subject of noise abatement.

13. An ordinance such as Burbank's cannot be considered solely in the accident of its particular circumstances, but must be weighed and tested as if imposed on a nationwide basis.

14. From the broad scope of the Federal statutes and regulations governing and controlling the use of air space and of air traffic, it is apparent that Congress intended to centralize full and dominant control of the navigable air space in the Federal Government so as to provide for the safe and most efficient use of such airspace. The scheme of federal regulation is so pervasive as to demonstrate that Congress intended to preempt the field and to leave no room for local ordinances such as the Burbank curfew ordinance.

15. Air transportation calls for a more penetrating, uniform, and exclusive regulation than is necessary for any other mode of transportation. It is a uniquely national operation in which the federal interest is so dominant as to preclude the enforcement of state or local laws, such as the Burbank Curfew Ordinance, on the same subject.

16. There would be a very serious loss of efficiency, and the statutory objective of efficient use of the airspace as set forth in the Act would be compromised, as a result of nationwide imposition of curfews such as that imposed at Hollywood-Burbank Airport, and accordingly, the City of Burbank has no power to enact the ordinance in issue in this case.

17. Each federally certificated air carrier is authorized and obligated by statute and by its Certificate of Public Convenience and Necessity to provide adequate service over its specified routes. Certificates of Public Convenience and Necessity held by the interstate air carriers cannot be revoked unless the carrier fails to comply with an order of the CAB requiring

violation to a federal rule found to have been violated. The Burbank curfew ordinance, by imposing a local curfew for a period of hours over use of the navigable airspace, constitutes a restriction on carriers in fulfilling their statutory duty and is tantamount to a partial suspension of the Certificates of Public Convenience and Necessity issued to interstate air carriers operating out of Hollywood-Burbank Airport. Said ordinance is therefore in direct conflict with federal law and is void under the Supremacy Clause (Art. VI, Para. 2) of the United States Constitution.

18. The Burbank curfew ordinance conflicts with the exercise of federal sovereignty over navigable airspace, 49 U.S.C. §1508(a), by imposing local control on its use, and, for the same reason, the ordinance conflicts with the federal right of each citizen of freedom of transit through the navigable airspace, 49 U.S.C. §1304, and is therefore void under the Supremacy Clause.

19. Under the Commerce Clause (Art. I, §8, Cl. 3) of the United States Constitution, the states are not deemed to have authority (a) to impede substantially the free flow of commerce from state to state, or (b) to regulate those phases of the national commerce, which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority.

20. The nationwide imposition of ordinances such as Burbank's would seriously interrupt the carriage of interstate passengers, mail, and goods and thereby substantially impede the free flow of commerce from state to state, and, considered on such a national basis, such ordinances could not stand.

21. The volume of air commerce, the speed with which it is conducted, the technical complexity of its scheduling and operation, and the limited availability of such of its essential aspects as airports, aircraft, air traffic routes, and aircraft maintenance facilities all make national uniformity of regulations prescribed by a single authority a necessity, so that this phase of the national commerce may be conducted with maximum safety and so as to achieve efficient use of the navigable airspace.

22. Plaintiffs and intervening plaintiff are entitled to judgment on their respective complaints for declaratory relief that each and every part and section of the Burbank curfew ordinance is unconstitutional, illegal and void.

23. Plaintiffs and intervening plaintiff are entitled to a decree that defendant City of Burbank and the individual defendants, and each of them, in their respective capacities as officials of the City of Burbank charged with the enforcement of the provisions of the Burbank curfew ordinance, their respective agents, servants, employees, attorneys and successors be enjoined and restrained by a permanent order of injunction of this Court from taking any action in pursuance of said ordinance.

24. Plaintiffs and intervening plaintiff are entitled to recover their costs of suit herein incurred.

25. Any finding of fact which should be deemed a conclusion of law is hereby adopted as such.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated this 30th day of November, 1970.

E. AVERY CRARY

United States District Judge

submitted by:

MELVENY & MYERS
WARREN CHRISTOPHER
RALPH W. DAU
BERTRAND M. COOPER

Attorneys for Intervening Plaintiff

By Warren Christopher

APPROVED AS TO FORM (x)

DISAPPROVED AS TO FORM ()

ERTLAND & PACKARD

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WINSTON F. TYLER

Attorneys for Plaintiffs

By /s/ Winston F. Tyler

Winston F. Tyler

APPROVED AS TO FORM (x)

DISAPPROVED AS TO FORM ()

SAMUEL GORLICK, City Attorney and

RICHARD L. SIEG, JR., Assistant City Attorney

By /s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr.

Attorneys for all Defendants

except Samuel Gorlick

By /s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr.

Attorney for Defendant Samuel Gorlick

RECEIPT ACKNOWLEDGED this 5th day of

November, 1970, at 4:00 p.m.

SAMUEL GORLICK, City Attorney, and

RICHARD L. SIEG, JR., Assistant City Attorney

By /s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr.

Attorneys for all Defendants

except Samuel Gorlick

By /s/ Richard L. Sieg, Jr.

Richard L. Sieg, Jr.

Attorney for Defendant Samuel Gorlick

Judgment.

Lodged Oct. 23, 1970.

Filed: Nov. 30, 1970.

(Title omitted in printing).

This action came on for trial before the Court, the Honorable E. Avery Crary, Judge, presiding, and the issues having been duly tried, and Findings of Fact and Conclusions of Law having been made and entered herein, in accordance therewith, and good cause appearing therefor:

IT IS ORDERED, ADJUDGED AND DECREED
as follows:

1. That each and every part and section of the Burbank curfew ordinance, Burbank Municipal Code Section 20-32.1, is hereby declared unconstitutional, illegal and void.

2. That defendant City of Burbank and the individual defendants, and each of them, in their respective capacities as officials of the City of Burbank charged with the enforcement of the provisions of the Burbank curfew ordinance, Burbank Municipal Code Section 20-32.1, their respective agents, servants, employees, attorneys and successors be and hereby are permanently enjoined and restrained from taking any action in pursuance of said ordinance.

3. That defendants pay to plaintiffs the sum of \$..... and to intervening plaintiff the sum of \$..... for their respective costs of suit herein incurred.

DATED: this 30th day of November, 1970.

/s/ E. Avery Crary

United States District Judge

(attorneys' signature lines on following page)

Submitted by:

KIRTLAND & PACKARD

ROBERT C. PACKARD

WINSTON F. TYLER

Attorneys for Plaintiffs

MELVENY & MYERS

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RALPH W. DAU

BERTRAND M. COOPER.

Attorneys for Intervening Plaintiff

/s/ By Warren Christopher

Warren Christopher

APPROVED AS TO FORM (.....)

DISAPPROVED AS TO FORM (.....)

SAMUEL GORLICK, City Attorney, and

RICHARD L. SIEG, JR., Assistant City Attorney

By

Richard L. Sieg, Jr.

Attorneys for all defendants except

Samuel Gorlick

By

Richard L. Sieg, Jr.

Attorney for defendant Samuel Gorlick

RECEIPT ACKNOWLEDGED this

day of October, 1970, at

o'clock — M.

SAMUEL GORLICK, City Attorney, and

RICHARD L. SIEG, JR., Assistant City Attorney

By

Richard L. Sieg, Jr.

Attorneys for all defendants except

Samuel Gorlick

By

Richard L. Sieg, Jr.

Attorney for defendant Samuel Gorlick

(Affidavit of Service omitted in printing).

**Opinion of the Court of Appeals
for the Ninth Circuit.**

United States Court of Appeals for the Ninth Circuit.

Lockheed Air Terminal, Inc., a corporation, and Pacific Southwest Air Lines, a corporation, Plaintiffs-Appellees, Air Transport Association of America, Plaintiff-Appellee, vs. The City of Burbank, a municipal corporation; Dr. Jarvey Gilbert, Mayor; Robert R. McKenzie, Vice Mayor; Councilman George W. Haven; Councilman Robert A. Swanson; Councilman D. Verner Gibson; Joseph N. Baker, City Manager; Samuel Gorlick, City Attorney for the City of Burbank, and Rex R. Andrews, Chief of Police of the City of Burbank, Defendants-Appellants, No. 71-1242.

[March 22, 1972]

**Appeal from the United States District Court
for the Central District of California**

Before: BROWNING, DUNIWAY and TRASK, Circuit Judges TRASK, Circuit Judge:

Hollywood-Burbank Airport (H-B Airport) is owned and operated by Lockheed Air Terminal, Inc. (Lockheed). It occupies approximately 535 acres, of which 128 acres (including portions of each of its two runways) are owned by the Federal Government. As a satellite airport for Los Angeles International Airport, it is included in the National Airport Plan promulgated by the Administrator of the Federal Aviation Administration (FAA) pursuant to the Federal Airport Act of 1946, 49 U.S.C. § 1101 *et seq.*¹ As such,

¹Private airports which meet the above criteria may be included in the NAP if they are now and will continue to be open to the public, if the facilities are adequate or may be expanded to meet recommended development needs, and if a more desirable location is not evident. Certain high-activity, privately owned

is used by United Air Lines, Western Airline, Air West and Pacific Southwest Airlines (PSA) as an alternative to Los Angeles International Airport when weather conditions at the latter prevent its use. Those airlines, together with Continental Air Lines, also use H-B Airport for regularly scheduled flights.

United, Western, Air West and Continental are interstate carriers and hold Certificates of Public Convenience and Necessity issued by the Civil Aeronautics Board (CAB). PSA is an intrastate carrier and holds a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission.

H-B Airport is located in a thickly populated area, and is entirely within the City of Burbank except 2,050 feet of the northernmost portion of its north-south runway, which lies in the City of Los Angeles. The north-south runway is the longer and preferred for take-offs. The east-west runway is better equipped with navigation guides for landing under minimum weather conditions. Both runways lead over residential districts in both directions.

In an effort to deal with the adverse environmental effects of jet aircraft at H-B Airport, specifically the problem of noise, the FAA Chief of the Airport Traffic Control Tower at the airport issued a series of runway preference orders. The last one, BUR 7100.5B, issued September 4, 1969, provided that, traffic and weather permitting, the east-west runway (landings from the east, taking off to the west) should be used as much as possible for departures of turbine powered aircraft between 11:00 p.m. of one day and 7:00

airports are also included if a Federal interest has been expressed through provision of facilities such as an air traffic control tower, even though these airports do not necessarily meet the responsibility criteria. Acquisition of such fields by an eligible public body is encouraged wherever possible." 1968 National Airport Plan at 14.

a.m. of the next. Aircraft departing to the west overfly that portion of the City of Los Angeles known as North Hollywood.

"1. **PURPOSE.** This Order prescribes procedures to be followed by Burbank Tower personnel in application of noise abatement procedures.

"4. **BACKGROUND.** The problem of noise in the vicinity of the Hollywood-Burbank Airport has become increasingly serious. More noise complaints are being received. Threats of legal action to be taken to obtain relief from noise are being heard. We need to do everything practicable and within reason to reduce the noise exposure to residents living near the airport. The workload caused in handling and following-up on noise complaints has increased to the point where it occupies a major portion of the administrative workload of the facility. Procedures established for the Hollywood-Burbank airport are designed to reduce the community exposure to noise to the lowest practicable minimum. The procedures are not mandatory on the part of the pilots, however, traffic controllers must be noise abatement conscious and emphasize noise abatement in order to obtain the highest degree of voluntary cooperation from pilots. The area within a 5-mile radius of the Hollywood-Burbank Airport is considered to be a noise-sensitive area.

"5. **PROCEDURES.** The following procedures apply to large (over 12,500 pounds) aircraft and all turbine powered aircraft:

"a. Normally do not assign runway 7 for departures, or runway 25 for arrivals [east-west runway].

"b. Traffic and weather permitting, make every effort to use runway 7 for arrivals of turbine powered aircraft.

"c. Traffic and weather permitting, use runway 25 for departure of turbine powered aircraft as much as possible during period from approximately 2300 to 0700 local time when people are asleep (residential area is less dense and further from end of runway west of 25 than south of 15).

"e. In the event a pilot requests departure on runway 7 or landing on runway 25, honor the request, traffic permitting, but inform the pilot that the runway is 'noise sensitive.' (Residential area closest east of airport.)

"f. These procedures are not intended to incur delays to aircraft or hamper the controller in handling airport traffic. If the traffic situation existing at the time requires the use of runways contrary to these procedures, controllers may deviate from the procedure. Controllers are expected to use good judgment in making this determination.

On March 31, 1970, the City Council of Burbank, in response to continuing complaints about noise from the airport, passed Ordinance No. 2216, which added Section 20-32.1 to the Burbank Municipal Code.¹ That ordinance, which took effect May 4, 1970, prohibited pure jet aircraft from taking off from H-B Airport between 11:00 p.m. of one day and 7:00 a.m. of the next day, and made it unlawful for the operator of the airport to allow such planes to take off at such times. Exception was made for emergency flights where the City Police Department was contacted and the Watch Commander on duty approved. The express purpose of this ordinance was to abate the serious environmental problem caused by the taking off of pure jet aircraft during sleeping hours.

One regularly scheduled flight was affected by the ordinance—an intrastate flight of PSA which originated in Oakland and departed from Burbank for San Diego at 11:30 p.m. each Sunday night. The other flights affected were principally departures of corporate aircraft.

Lockheed and PSA brought suit in the United States District Court for the Central District of California on

(a) Pure Jets Prohibited from Taking off Between 11:00 p.m. and 7:00 A.M.

It shall be unlawful for any person at the controls of a pure jet aircraft to take off from the Hollywood-Burbank Airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

(b) Airport Operator Prohibited from Allowing Take-Offs.

It shall be unlawful for the operator of the Hollywood-Burbank Airport to allow a pure jet aircraft to take off from said airport between 11:00 P.M. of one day and 7:00 A.M. the next day.

(c) Exception: Emergencies.

This section shall not apply to flights of an emergency nature if the City's Police Department is contacted and the approval of the Watch Commander on duty is obtained before take-off."

May 14, 1970, against the City of Burbank and certain of its officers, seeking declaratory and injunctive relief on the ground that the Burbank ordinance is unconstitutional. Air Transport Association of America, an unincorporated association of scheduled interstate air carriers, was permitted to file a complaint in intervention.

The district court assumed jurisdiction over the case under 28 U.S.C. §§ 1331(a) and 1337, and trial of the action was held in September 1970. On November 30, the district court's findings of fact, conclusions of law and judgment were signed and filed. That judgment declared the Burbank ordinance unconstitutional, illegal and void, and enjoined its enforcement. The court held that the ordinance violated the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Commerce Clause, U.S. Const. art. I, § 8, cl. 3. *Lockheed Air Terminal, Inc. v. Burbank*, 318 F. Supp. 914 (C.D. Cal. 1970).

This appeal was taken from that final judgment pursuant to 28 U.S.C. § 1291, and is properly before us. In deciding this case, we limit ourselves to the issue whether the municipal ordinance is unconstitutional under the Supremacy Clause, as that determination is dispositive of the appeal.

The Supremacy Clause states that the Constitution, federal laws "made in Pursuance thereof . . ." and treaties "made under the Authority of the United States, shall be the supreme Law of the Land. . . ." U.S. Const. art. VI, cl. 2. It establishes as a principle of our federalism that state and local laws are not enforceable if they impinge upon an exclusive federal domain. This impermissible impingement is diversely described as "preemption" and "conflict." The applica-

one of those terms means that the state or local government has attempted to exercise power which it does not possess because of an express or implied denial of that authority in the Constitution, valid federal laws and regulations promulgated thereunder, or valid treaties. See *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1971). Compare *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963), and *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947), with *Perez v. Campbell*, 402 U.S. 607 (1971).

The Preemption Issue

In this case appellees (and FAA in its amicus curiae brief) contend that the Federal Aviation Act of 1958, 49 U.S.C. § 1301 *et seq.*, operates to deny Burbank the power to enact the ordinance in question. There is no doubt that the Act creates a comprehensive federal scheme to deal with air commerce, under the administrative auspices of the FAA and CAB. Section 1308 declares that the United States possesses and exercises complete and exclusive national sovereignty in the navigable airspace over the country, and section 1304 grants to the citizens of the United States a public right of freedom of transit in this navigable airspace. The CAB issues Certificates of Public Convenience and Necessity to air carriers, without which they cannot engage in air transportation, 49 U.S.C. § 1371, and the FAA Administrator has power to prescribe air traffic rules and develop plans and policy for the use of the navigable airspace, 49 U.S.C. § 1348. He also issues airman, aircraft, air carrier and airport operating certificates. 49 U.S.C. §§ 1422-24, 1432. Under section 1353, the Administrator of the FAA is directed to make "long range plans . . . and formulate policy . . ."

for the use of the navigable airspace and the development of air navigation facilities, including airports. If an airport is built or materially altered, the Administrator must be notified, even though no federal funds are involved, 49 U.S.C. § 1350.⁴ Section 1431, which was added to the Federal Aviation Act in July 1968, specifically provides for responsibility of the FAA Administrator with respect to ecological and environmental problems:

"(a) In order to afford present and future relief and protection to the public from unnecessary aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration . . . shall prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom.

Appellants (and the State of California as *amicus curiae*) argue that they are not precluded by the Federal Aviation Act from enacting the ordinance in question as an exercise of their police power, based on the legislative history of 49 U.S.C. § 1431, and the principle of State and local responsibility enunciated in the Environmental Quality Improvement Act of 1970, 42 U.S.C. § 4371 or *seq.*

Whether a federal statute preempts the otherwise lawful authority of a State or local government to

"In order to insure conformity to plans and policies for, and allocations of airspace by the Administrator under section 1348 of this title, no airport or landing area not involving expenditure of Federal funds shall be established, or constructed, or any runway layout substantially altered unless reasonable prior notice thereof is given the Administrator, pursuant to regulations prescribed by him, so that he may advise as to the effects of such construction on the use of airspace by aircraft."

regulate in a specific area is a question of Congressional intent. "[W]e start with the assumption that the police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Therefore, if Congress expressly declares that the authority conferred by it shall be singularly federal, the States may not exercise concomitant or supplementary power over the identical activity. *Campbell v. Hussey*, 368 U.S. 271 (1961); *Rice v. Santa Fe Elevator Corp.*, *supra*. Even when Congress has failed to speak expressly to the issue of federal exclusivity, intention to create sole federal authority can be implied. Key factors in this determination include: (1) the pervasiveness of the federal regulation, *Rice v. Santa Fe Elevator Corp.*, *supra*; (2) dominance of the federal interest in the field of regulation, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 143-44 (1963); *Rice v. Santa Fe Elevator Corp.*, *supra*; and (3) the objectives of the federal regulation and whether non-federal regulation obstructs the full execution of those aims, *Perez v. Campbell*, 402 U.S. 637, 649 (1971); *Rice v. Santa Fe Elevator Corp.*, *supra*.

The pervasiveness of federal regulation in the field of air commerce, the intensity of the national interest in this regulation, and the nature of air commerce itself require the conclusion that State and local regulation in that area has been preempted.

The overall design of Congress in enacting the Federal Aviation Act of 1958 was to centralize in a single authority the power to establish rules and regulations for the sole and efficient use of the nation's airspace. *Int'l Line Pilots Ass'n, Inc'l v. Quesada*, 276 F.2d 892.

894 (2d Cir. 1960). This purpose is reflected in 49 U.S.C. § 1303, which lists those matters to be considered by the Administrator of the FAA in the exercise of his powers and the performance of his duties under the Act:

"(a) The regulation of air commerce in such a manner as to best promote its development and safety and fulfill the requirements of national defense;

"(b) The promotion, encouragement, and development of civil aeronautics;

"(c) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both;

"(d) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof;

"(e) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft."

Those interests were supplemented in 1968 by the addition of 49 U.S.C. § 1431, which provides:

"(a) [T]he Administrator of the Federal Aviation Administration . . . shall prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise.

"(b) In prescribing and amending standards, rules and regulations under this section, the Administrator shall—

"(3) consider whether any proposed standard, rule or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest. . . ."

Pursuant to this statutory scheme, the Administrator of the FAA must balance considerations of safety, efficiency, technological progress, common defense and environmental protection in the process of formulating rules and regulations with respect to the use of the nation's airspace. There is no single objective to which he must address himself, but a complex of goals which may individually lobby for inconsistent results in a given circumstance. Congress has vested the federal agency with the responsibility and concomitant authority to resolve the proper balance among the multiple purposes. If State and local governments were to be allowed to exercise supplementary power in this area, they might conceivably be overprotective of one of the multiple values and upset the delicate balance struck by the FAA under the aegis of federal law.

The case of *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440 (1960), vigorously cited by appellants in support of their position, is distinguishable on the basis of this analysis. There, Detroit was allowed to apply its Smoke Abatement Code to a vessel which had federally inspected and approved boilers. The Court found that the purpose of the federal inspection laws was "clearly limited to affording protection from the perils of maritime navigation." *Id.* at 445. On the other hand, the purpose of the city regulation was the control of air pollution for the health and welfare of its inhabitants. *Id.* at 442. Since these purposes were not conflicting and there was no overlap of scope between them, there was no preemption. The federal regulation was solely concerned with safety and not environmental quality,

and there was no argument that boilers which complied with the Detroit code might be less safe and, therefore, compromise the federal objective.*

Appellants argue that the legislative history of 49 U.S.C. § 1431 manifests Congress' intention to allow Burbank to regulate as it has. Our attention is directed to that portion of Senate Report No. 1353, 90th Cong., 2d Sess. 6-7 (1968), which quotes with approval from a letter of June 22, 1968, from the Secretary of Transportation to the Committee on Interstate and Foreign Commerce:

"The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. Local noise control legislation limiting the permissible level of all overflying aircraft has recently been struck down because it conflicted with Federal regulation of air traffic. *American Airlines v. Town of Hempstead*, 272 F. Supp. 226 (U.S.D.C., E.D., N.Y., 1966). The court said, at 231, 'The legislation operates in an area committed to Federal care, and noise limiting rules operating as do those of the ordinance must come from a Federal source.' H.R. 3400 would merely expand the Federal Government's role in a field already preempted. It would not change this preemption. State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft.

"However, the proposed legislation will not affect the rights of a State or local public agency,

**Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc.*, 372 U.S. 714 (1963), is likewise distinguishable on this basis.

as the proprietor of an airport, from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport. Airport owners acting as proprietors can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.

"Just as an airport owner is responsible for deciding how long the runways will be, so is the owner responsible for obtaining noise easements necessary to permit the landing and takeoff of the aircraft. . . . [T]he Federal Government is in no position to require an airport to accept service by noisier aircraft, and for that purpose to obtain additional noise easements. . . . The proposed legislation is not designed to do this and will not prevent airport proprietors from excluding any aircraft on the basis of noise considerations."

Appellants urge that, according to this Senate Report, 49 U.S.C. § 1431 was intended to apply only to aircraft "in flight," because *Hempstead* was an "in-flight" case.⁹ We do not believe this argument rests upon

⁹*American Airlines, Inc. v. Hempstead*, 272 F. Supp. 226 (S.D.N.Y. 1967), *aff'd*, 398 F.2d 369 (2d Cir. 1968), *cert. denied*, 393 U.S. 1017 (1969); *Allegheny Airlines, Inc. v. Cedarhurst*, 238 F.2d 812 (2d Cir. 1956); and *American Airlines Inc. v. Audubon Park*, 297 F. Supp. 207 (W.D. Ky. 1968), *aff'd per curiam*, 407 F.2d 1306 (6th Cir.), *cert. denied*, 396 U.S. 845 (1969), involved ordinances enacted by cities and towns near major airports. The airports were not within the respective municipalities' boundaries. The ordinances limited the level of noise which could lawfully be created or the altitudes which could lawfully be assumed by overflying aircraft. FAA regulations with respect to landings and take-offs at the nearby airports required lower elevations and louder sounds than those permissible under the ordinances. The ordinances were, therefore, invalid because to obey them one would have to directly disobey the federal regulations.

a sound reading of either the Secretary's letter or the statute.

Pursuant to 49 U.S.C. § 1431, the Administrator of the FAA, after consultation with the Secretary of Transportation, is to prescribe and amend such rules and regulations as he may find necessary to provide for the abatement of aircraft noise. Surely this does not mean abatement of noise of aircraft flying at or above 35,000 feet. That is not the kind of noise from which the public needs "present and future relief and protection. . . ." The statute gives the Administrator power to deal with noise that is offensive to persons on the ground, including the noise created by low-flying aircraft, takeoffs and landings, and the noise created by aircraft on the ground at airports.*

The Secretary's letter emphasizes the status of the one regulating the use of the airport, not the locus of the aircraft when the offensive sounds are produced. A

*The Federal Airport Act of 1946, 49 U.S.C. § 1101 *et seq.*, further emphasizes the interdependence between aircraft and airport. It directs the development of a national plan for:

"[A] system of public airports adequate to anticipate and meet the needs of civil aeronautics. . . . In formulating and revising such plan, the Administrator shall take into account the needs of both air commerce and private flying . . . technological developments . . . [and] probable growth and requirements of civil aeronautics. . . ." 49 U.S.C. 1102.

The 1968 National Airport Plan prepared by the FAA in accordance with that directive notes:

"Thus, we see in the many forms of air travel—air carrier, general aviation, air cargo—a dominant element of the transportation industry in the U.S. The speed and efficiency of movement of goods and people obtained through air transportation are vital to our Nation's continued economic growth. Its advantages must be maintained. It is particularly important that the airport, as a principal component in the air transportation network, meets the demands placed on it by this growth." *Id.* at 4.

State or local public agency, as the proprietor of an airport, can deny the use of its airport based on noise consideration;³ a State or local government cannot use its police power to do so.⁴

The City of Burbank has no proprietorship interest in H-B Airport. It is making an effort to exert its police power in the field of noise regulation, which the Secretary states, and the Committee agrees, has been preempted by the Federal Government. The Supremacy Clause, U.S. Const. art. VI, cl. 2, invalidates that effort.

Prior to the argument of this case, the court invited the State of California to submit an amicus curiae brief and to participate in oral argument directed particularly to the effect of the Environmental Quality Improvement Act of 1970, 42 U.S.C. § 4371 *et seq.*, on the issues of this litigation. We have had the advantage of the State's comprehensive brief and its oral comments.

Section 4371(b)(2) of the Environmental Quality Improvement Act places the "primary responsibility for implementing . . ." the national policy for enhancement of environmental quality on "the State and local govern-

³As the Secretary's letter indicates, this reservation of power to the proprietors of airports to regulate their use derives from *Griggs v. Allegheny County*, 369 U.S. 84 (1962). That case held that Allegheny County, as promoter, owner and lessor of the Greater Pittsburgh Airport, was responsible to pay compensation for easements taken by the operation of the airport.

Pursuant to this proprietorship power, the City of Santa Monica has successfully imposed a curfew, similar to that envisioned by the City of Burbank, on the Santa Monica Airport. *Stagg v. Municipal Court*, 2 Cal. App. 3d 318, 82 Cal. Rptr. 578 (1969); see *In re Dreflur*, FAA Regulatory Docket No. 9071 (7/10/69).

⁴See *Opinion of the Justices*, ___ Mass. ___, 271 N.E.2d 354 (1971). But cf. *Hämoer v. Morristown*, 108 N.J. Super. 461, 261 A.2d 692 (1969).

ments." This general commitment of environmental problems to local regulation does not, however, overcome the preemptive nature of Congress, particular commitment of air commerce problems to the federal domain. See *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1971).

The State also points out that the Federal Aviation Act contains a "saving clause," 49 U.S.C. § 1506," a reservation of common law and statutory remedies, indicating that Congress did not intend to preempt state and local regulatory authority.

"Of course such a general provision does not resolve specific problems, *Arrow Transportation Co. v. Southern R. Co.*, 372 U.S. 658, 671, n. 22, but its inclusion in the statute plainly is inconsistent with congressional displacement of the state statute unless a finding of that meaning is unavoidable." *Head v. Board of Examiners*, 374 U.S. 424, 444 (1963) (concurring opinion).

In this case, we have found the conclusion of federal preemption "unavoidable." Furthermore, the Federal Aviation Act also contains language of exclusivity. 49 U.S.C. § 1508 declares that the United States possesses and exercises "complete and exclusive national sovereignty in the airspace of the United States. . . ." That is the same type of expression which the Supreme Court found in the Federal Tobacco Inspection Act to evidence Congressional intent to establish a wholly federal system which States were powerless even to supplement. *Campbell v. Hussey*, 368 U.S. 297 (1961).

¹⁰ § 1506. Remedies not exclusive

"Nothing contained in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."

The Conflict Issue

The most recent pronouncement by the Supreme Court in the Supremacy Clause area came in *Perez v. Campbell*, 402 U.S. 637 (1971). There, the Court held that Arizona's Motor Vehicle Safety Responsibility Act conflicted with Section 17 of the Federal Bankruptcy Act, 11 U.S.C. § 35, which states that a discharge in bankruptcy discharges all but certain specified judgments. The state statute called for the suspension of the license of a driver who was involved in an automobile accident and who failed to post sufficient security with respect to potential liability. This suspension was to continue until any judgment debt incurred as a result of the accident was paid and proof of financial responsibility was given. The act expressly stated that release from the judgment debt through federal bankruptcy proceedings would not terminate the license suspension. In determining that there was conflict, the Court stated:

"As early as *Gibbons v. Ogden*, 9 Wheat. 1 (1824), Chief Justice Marshall stated the governing principle—that 'acts of the State legislatures . . . [which] *interfere with*, or are contrary to the laws of Congress, made in pursuance of the constitution,' are invalid under the Supremacy Clause. *Id.* at 211 (emphasis added). Three decades ago Mr. Justice Black, after reviewing the precedents, wrote in a similar vein that, while '[t]his Court in considering the validity of state laws in the light of treaties or federal laws touching the same subject, ha[d] made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interfer-

ence[.] . . . [i]n the final analysis, our function is to determine whether a challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)." 402 U.S. at 649 (emphasis added).

The Burbank ordinance in question "'stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress.'" *Id.* The FAA Chief of the Airport Traffic Control Tower at H-B Airport had already issued and put into effect a runway preference order, BUR 7100.5B,¹¹ dealing precisely with the problem of noise in the vicinity of the airport, at the time the Burbank curfew ordinance was passed. No question is raised as to the authority of the Chief of the Tower to issue this order, nor is there doubt as to its official character.

The order stated that "[p]rocedures established for the Hollywood-Burbank airport are designed to reduce community exposure to noise to the *lowest practicable minimum* . . ." (emphasis added). This assertion represents a considered determination by an authorized representative of the FAA that measures of the magnitude of that taken by the City of Burbank are beneath "the lowest practicable minimum." The municipal curfew ordinance, therefore, interferes with the balance set by the FAA among the interests with which it is empowered to deal, and frustrates the full accomplishment of the

¹¹See note 2 *supra*.

goals of Congress.¹² Because of this conflict, as well as the general preemption of the area of aircraft noise regulation from the exercise of a State or local government's police power, the Burbank ordinance is unconstitutional, illegal and void.

Judge Browning concurs in the judgment and in the portion of the opinion headed "The Conflict Issue."

The judgment of the district court is affirmed.

¹²At the date of the imposition of the curfew PSA operated a flight which departed H-B Airport at 11:30 each Sunday night for San Diego. An average of about 80 persons boarded at H-B Airport. The effect of the curfew was to terminate the right of flight of prospective passengers through this portion of the airspace of this time.

(TITLE OMITTED IN PRINTING)

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed. With costs in this Court in favor of the Appellees and against the Appellants in the amount of \$1,500.00.

Filed and entered March 22, 1972.